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Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

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

Let us pray.

Eternal Saviour, we need You every hour of every day. We not only need You during crisis times but also in the solitary moments of daily living.

Lord, our lawmakers need You. As they open their hearts to You, fill them with power for today's tasks. Show them Your will for our times and give them the wisdom to say, "Speak, Lord, for we are listening." May the inspiration they receive from You keep their hearts pure, their minds clear, their words true, and their deeds kind.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 4, 2009.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, after leader remarks, we are going to be in a period of morning business for up to an hour. During that period of time, Senators will be allowed to speak for up to 10 minutes each. The Republicans will control the first half, and the majority will control the second half.

Following morning business, we will proceed to the tobacco legislation, H.R. 1256. Two amendments are currently pending to the Dodd substitute amendment; that is, the Burr-Hagan substitute and a Lieberman amendment regarding TSP. Senator HAGAN will be here as soon as we complete morning business to offer some amendments. The Republican leader and I thought it would be appropriate that Senators who have amendments relating to the bill that are relevant and germane would offer their amendments first, and those Senators are HAGAN and BURR. So we want them to get whatever amendments they want to offer laid down so that we can go to other matters people wish to bring up.

I announce that I have had, frankly, a number of conversations with Senators on both sides, and there are a number of important events today—this evening, I should say—so we are not going to be working late tonight. I think if we go to 6 o'clock, that will probably be about as far as we go. There is a funeral service for one of the employees of the Senate who has worked in the Capitol for many years who was killed in a car accident on

Sunday. We have to make sure the people who want to go to that have that opportunity. There are a number of other events, including something at the Vice President's residence this evening. So everyone should be alerted to that.

I had a conversation with the Republican leader yesterday about the schedule for the next work period. We have 3 weeks left in this work period, and we have things we want to do. I have explained to the Republican leader that we would like to do at least two appropriations bills. I have indicated that to Chairman INOUE, and he has conveyed that to Ranking Member COCHRAN. We want to at least get the legislative branch legislation out of the way and Homeland Security out of the way.

There are other things, of course, we are going to work on during this work period. We have the supplemental appropriations bill that we need to complete within the next couple of days. We have this tobacco legislation which we need to complete. There is a tourism bill which was completed and reported out of the Commerce Committee which is bipartisan and important. It is interesting. In every State in the Union, tourism is important. It is either the No. 1, 2, or 3 most important part of the State's economy. We are going to try to complete that this work period. So we have a lot of things to do.

The next work period, in July, where we have 5 weeks, we will have by then completed, we hope, the legislative branch appropriations, and we will have completed Homeland Security. We have appropriations bills we want to work on. We have health care that will likely be worked on during that period of time.

We have the DOD authorization, which is extremely important. Not only does it have the standard stuff in it that we always did, but we also have to do something about military commissions. This involves the situation we have with enemy combatants and

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



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other people who need to be tried in military courts and who can't be tried, for various reasons, in civil courts. That is going to be a part of the DOD authorization this year, which will make it difficult. We have to do that because what we have passed before was declared unconstitutional by the Federal courts. So we have to do that.

We also have to make a decision as to whether we are going to be able to do the Supreme Court nomination during the next work period or whether that will spill over until the next period, which would be September. I have spoken with the Republican leader about that, and he has indicated he is going to be communicating with me as to what he thinks should be done in more detail than our brief conversation yesterday.

So the reason I am talking about this today is to alert all Senators, as I have, as well as Senator MCCONNELL yesterday, that the next 5 weeks is going to be a unique work period in the Senate. Because of the makeup of the Senate changing over the years and it becoming a place where there is an obligation people have with their families, we aren't able to work the long weeks we have in the past. We have plenty of work to do. No one is complaining that we are not working hard enough, but sometimes you just have to put in the time because of the procedural obligations we have here, procedural rules we have to follow in the Senate.

So the next work period, which is July 5 through August 7, which is 5 weeks, there will only be one no-vote day, and that is July 16. The reason for that is as I have outlined. We are going to conduct business on Mondays and Fridays, and there will be rollcall votes on those days. That is the plan.

I have just been advised that the no-vote day is Friday, July 17, not July 16. So everything I have said other than that is valid. July 16 is a Thursday.

For example, health care—we cannot complete that most important legislation by working just Tuesday through Thursday.

I had a chairmen's meeting yesterday. We meet every other week with all of the chairmen. It was clear from conversations I had with all of our chairmen that we are going to have to have a very long, hard work period in July. If there are questions anyone has or special circumstances, they can contact either the Republican leader or me, and we will be happy to take a look, but everyone is on notice that is where we are. So with respect to your scheduling on Mondays and Fridays, be very careful because we are not going to be able to come in here on Mondays at 5:30. We are going to have to have regular workdays.

Mr. MCCONNELL. Madam President, I ask my friend before he leaves the floor, what was the no-vote day in the July work period?

Mr. REID. July 17.

Mr. MCCONNELL. The 17th. I thank the leader.

RECOGNITION OF THE MINORITY LEADER

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

HEALTH CARE REFORM

Mr. MCCONNELL. Madam President, one thing that unites Democrats and Republicans this morning is that all of us want health care reform in this country. Americans want reform that addresses the high cost of care and gives everyone access to quality care. In America in 2009, doing nothing is simply not an option. We must act, and we must act decisively. The question is not whether to reform health care; the question is how best to reform health care.

Some are proposing as a reform that the government simply take over health care, but Americans have seen the government take over banks, they have seen the government take over insurance companies, they have seen the government take over auto companies, all of that in recent months, and they are concerned about it. So as we discuss health care reform, it is understandable that many Americans would be equally if not more concerned about a government takeover of health care.

Some are openly calling for this government takeover of health care, making no apologies about it. Others disguise their intentions by arguing for a government "option" that we all know will really lead to government-run health care being the one and only option. But it should be perfectly obvious to anyone who has followed government takeovers in the financial sector and the auto industry that government creates an unfair, not level playing field that puts other companies at a disadvantage and only ends up hurting consumers in the end.

We have seen this with the insurance bailouts. When most companies want to raise money, they have to show they are viable and their products and services are a worthwhile investment. That is what most companies have to go through. Bailed out insurers just have to ask for more money, and the government hands it over. Apply this model to health care, and the government would be able to create the same kind of uneven playing field that would, in all likelihood, eventually wipe out competition, thus forcing millions of people off the private health plans they already have and which the vast majority of them very much like.

We are also seeing the ill effects of government control in the auto industry. The government has already given billions of dollars to the financing arms of Chrysler and General Motors, allowing them to offer interest rates Ford and other private companies struggle to compete with. This means the only major U.S. automaker that actually made the tough choices and didn't take bailout money is at a major

disadvantage as it struggles to compete with government-run auto companies such as GM. If Ford needs money, it has to raise it at an 8-percent rate of interest. If GM wants money, all it has to do is to call up the Treasury and ask for it. No company can compete with that.

This is how the government subsidizes failure and undercuts private companies, and this is how a government plan would undercut private health care plans, forcing people off the health plans they like and replacing those plans with plans they like less.

No safeguard could prevent this from happening. Eventually, Americans would be stuck with government-run health care whether they like it or not. That is when the worst scenario would take shape, with Americans subjected to bureaucratic hassles, hours spent on hold waiting for a government service representative to take a call, restrictions on care, and, yes, lifesaving treatment and lifesaving surgeries denied or delayed. Medical decisions should be made by doctors and patients, but once the government is in control, politicians and bureaucrats would be the ones telling people what kind of care they can have. Americans could find themselves being told they are too old to qualify for a procedure or that a treatment that could extend or improve their lives is too expensive.

If anybody doubts this can happen, they should consider what happened to Bruce Hardy.

Bruce was a British citizen suffering from cancer. His doctor wanted to prescribe a drug that was proven to delay the spread of the cancer and may well have extended his life. But the government bureaucrats who run Britain's health care system denied treatment, saying the drug was too expensive. The British Government told Bruce his life wasn't worth prolonging because of what it would cost the government to buy the drugs he needed. The government decided that Bruce Hardy's life wasn't worth it.

Or take the case of Shona Holmes, a Canadian citizen who was told by the bureaucrats running the health care system in that country she would have to wait 6 months—6 months—to see a specialist to treat her brain tumor. Here is how Shona described her plight:

If I had relied on my government, I would be dead.

Shona's life was eventually saved, fortunately, because she came to the United States for the care she needed. With her vision deteriorating, she went to the Mayo Clinic in Arizona, and the doctors there told her immediate surgery would be needed to prevent permanent vision loss and maybe even death. Meanwhile, the government-run system in Canada would have required more appointments and more delays. Ms. Holmes got the treatment she needed, when she needed it, in the United States.

The American people want health care reform, but creating a government

bureaucracy that denies, delays, and rations health care is not the reform they want. They don't want the people who brought us the Department of Motor Vehicles making life-and-death decisions for them, their children, their spouses, and their parents. They don't want to end up like Bruce Hardy or Shona Holmes.

GUANTANAMO BAY

Mr. MCCONNELL. Madam President, on a very timely subject, we understand that discussions are underway on the conference report on the supplemental. I think it is important to remind everybody in the House and in the Senate that, just a few weeks ago, the Senate answered the question that has concerned Americans and that is this: whether the terrorist detainees at Guantanamo Bay, Cuba, should be transferred stateside to facilities that could be in or near their communities.

By an overwhelming vote of 90 to 6, the Senate said: No way, not without a plan. It passed the bipartisan Inouye-Inhofe amendment that bars the administration from transferring these terrorist detainees into the United States—90 to 6.

This is not a change in the Senate's position. Just a few years ago, the Senate, by a vote of 94 to 3, said the same thing: We should not move some of the world's most dangerous terrorists out of Guantanamo's modern, safe, and secure facility into our country.

The views of the Senate are abundantly clear. Nevertheless, it has been reported that congressional Democrats are privately considering the entreaties of the White House to repudiate these very clear views and to allow terrorist detainees to come into the United States.

What has changed? What has changed in the last couple weeks?

The views of the American people have not changed. In fact, they are more firmly opposed to this now than they were 2 months ago. Nor have the dangers and difficulties of moving the detainees into the United States.

The FBI Director, a couple weeks ago, testified about the dangers of holding these terrorists in the United States. Most of us are familiar with the problems Alexandria, VA, experienced with the trial of just one terrorist: security problems, transportation problems, logistical problems, commercial problems and on and on. Indeed, if you want to try these detainees by military commission—something I support—there is no better place than the \$12 million modern courtroom right there at Guantanamo Bay.

The administration's supporters point to Supermax as a place to house these terrorists. But our colleagues from Colorado don't support moving them there, nor is there anyplace in the facility to put them.

The Denver Post reports there is just one bed open at Supermax—just one. That means these terrorists would

have to come somewhere else, perhaps to a facility in your State.

Why in the world would Senate Democrats be considering the idea of giving the administration millions of dollars for doing this, especially since we still don't have a plan?

According to a Member of the Democratic leadership, it is because keeping terrorists at Guantanamo is a "problem politically" for the administration.

That is most curious. Assuming this is a political problem, with whom does the administration have it? It is not with the American people. They don't want Guantanamo closed, and they certainly don't want its inmates transferred here. It is not with our colleagues from Colorado. They don't want these detainees transferred into their State any more than the rest of America does.

It seems like the administration's "political problem" is a diplomatic one with the Europeans, who want the United States to accept some of these dangerous terrorists before they will. It is not in the interest of the United States to compromise our security to appease our European critics.

Similar to most Americans, I am for keeping Guantanamo open. It is safe and securely away from our civilian population. Perhaps I could be persuaded to change my mind if the administration comes up with a plan. They have time to do that and still receive funding to execute a plan through the regular order when we take up the 2010 appropriations bills in a few months.

But we should not rush to give the administration a blank check to do something, sight unseen, that Americans overwhelmingly oppose.

As Senate Democrats have often said, the Senate is not a rubberstamp. We should not flip-flop on our vote of a few weeks ago.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time to be equally divided and controlled between the two leaders, or their designees, with the Republicans controlling the first half and the majority controlling the second half.

The Senator from Oklahoma is recognized.

HEALTH CARE

Mr. COBURN. Madam President, I have given a lot of thought to this, and

I appreciate what the leader said about health care. I am the only practicing physician in the Senate. We have one of our colleagues who is no longer practicing. But it struck me, as a physician, that what we should do in health care ought to be what our patients want us to do. What is it the people—the very personal aspect of health care—would like to see?

There is no question we have big problems in health care. There is dissatisfaction in the insurance side, with Medicare and Medicaid, and the lack of access. But what is it we should be talking about that will solve the insecurities, the problems, the concerns of the American people? I wish to go through with you a little list of items I think individuals in this country would agree with on how we ought to handle health care.

First, we ought to make sure health care is available to everybody in this country and that it is affordable. We will spend, this year, \$2.4 trillion on health care, or 17.5 percent of our GDP. Yet we know that out of that \$2.4 trillion, \$700 billion doesn't help anybody get well and doesn't prevent anybody from getting sick. We now have an administration that wants to spend another \$1.3 trillion over the next 10 years, or \$130 billion more per year, to try to solve this problem. The money is not the problem. We know, in Medicare alone, there is \$70 billion to \$80 billion worth of fraud and in Medicaid \$40 billion worth of fraud and that is in the government-run programs.

The second thing we ought to make sure of is that everybody can be covered. We can do that with the money we have today. We can make sure everybody gets covered. The other thing we ought to do is make sure everybody who has a plan they like today can keep it. After all, health care isn't about health care, it is about individuals, it is about persons, what they desire, what they need, and when they need it.

We can, in fact, fix the fraud, waste, and abuse in health care. It is something we can do. Not long ago, we discovered we had one wheelchair that had been sold multiple times by one durable medical equipment company in Florida, but it was never delivered, and they collected \$5 million from Medicare for that one wheelchair. That is just the tip of the iceberg of the fraud.

Another thing we know we need to do, and that patients want us to do—because we have a government-run system for 60 percent of our health care today—is we ought to prioritize wellness and prevention. Do you realize Medicare doesn't pay for wellness and prevention and Medicaid doesn't pay for wellness and prevention? So we don't have wellness and prevention. What that leads to is additional chronic disease, which we then will have to manage—a disease we could have prevented.

Another issue I was thinking about—especially with my patients—is that

some are employed and have insurance through their employer, but those who are employed but don't have insurance or they own their own business or they are self-employed, they get a totally different look from the IRS about their health expenses. If your employer pays for it, there are no taxes, but if you have to pay for it or you are self-employed or you have your own business, you have to take dollars, after tax, and pay for your health care. So one of the things we have to do is equalize that so everybody is treated the same under the Tax Code for their health care.

How does that work out? Well, if your employer provides your health care, you get about \$2,700 worth of tax benefits a year. But if you provide your health care, you get only about \$100 worth of tax benefit. It is ironic because it is so unfair to say you don't get the same benefit under the Tax Code because you happen to either work in a place that doesn't provide health insurance or you own your own business or you are self-employed.

The other issue I thought about that my patients would want is: What should we not do? What should we make sure we do not do? I think about my patients, and the last thing they want is more government involvement in their health care. We heard the minority leader talk about what happens in Canada when you get sick and how you have to wait and what happens in England when you get sick and are denied care because you are not worth it because of your age. Health care delayed, in the case of the lady he mentioned from Canada, is death. Health care denied, as he mentioned about the gentleman from England, is death—for both those individuals.

If you think about the government-run health care programs today, talk about Indian health care, a government-run program that is so substandard nobody would embrace it. If you think about VA health care—although it is improving through the years—it is still far below the standards of health care in this country. Then, if you think about the fraud in Medicaid and Medicare and the hoops everybody has to jump through, in terms of those two programs, I think most Americans would say: Let's fix it so everybody can have what they need and let's make sure everybody gets covered and let's make sure we do that without having government bureaucrats deciding what, when, and how we get our care.

The final issue is we know one of the problems we have today—besides a recession—is this huge amount of people who are unemployed. Yet we also know 72 percent of all new job creation comes from small business. A proposal is floating out there that we are going to tax you, through a pay-or-play mandate, if you don't provide health insurance for your employees, and you are going to pay into the government to do that. That will kill job creation in this country.

We can fix health care. It needs to be fixed. Everybody agrees with that. How we fix it is the most important issue we are going to deal with in the next 2 years. The idea that we can come to a solution of this in the next couple months, with the complexity we have, will assure us of one of two things: One is a government bureaucratic takeover of health care, or a piece of legislation that will deny care, which will put somebody in between a patient and their doctor and will either delay care or, in fact, will raise the cost of health care.

As somebody who has practiced for 25 years in the field of medicine, obstetrics, and allergy, what I know is that we have a good health care system if we can get the government out of it and not put more government into it. What we need is fairness in access, fairness in the Tax Code, and allow the true American experiment to work in health care as we have had it work in so many other things.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

ENERGY

Mr. VITTER. Madam President, I rise today to talk about the crucial issue of energy, to express real and deep concern that President Obama's energy proposals are, pure and simple, a huge package of new taxes on domestic energy production that will hurt this country and particularly hurt middle-class and working-class families, and to offer a clear alternative which is embodied in a bill I have introduced with 14 other Senators and 30 House Members, the No Cost Stimulus Act of 2009.

Energy plays a very unique and important role in our great society because energy—affordable, accessible energy—is one of the great equalizers in our great society. Low-cost energy provides for the single mom working two jobs to be able to drive her kids to school in the morning or soccer practice on the weekend, the way a wealthy family can. Low-cost energy allows for an elderly couple living on Social Security to stay warm in the winter and cool in the summer, as Warren Buffett can.

In providing energy that is truly affordable and accessible to businesses and consumers, we not only grow the society, but it is even more fundamental than that. It is a great equalizer. We ensure that those important opportunities and comforts are available to everyone in our society.

The converse of that is also true. When Congress acts to increase the cost of energy or when Congress acts knowing that will be the effect, we are making a decision to reduce the standard of living of middle-class, working-class families and the poor. We are making a decision to increase that gap, to put classes into our society and take away one of those great equalizers.

Cheap, affordable, accessible energy is as basic as putting a roof over your head and food on the plate of your children. Energy keeps the elderly in Wisconsin warm in the winter, keeps kids in Louisiana cool in the very hot and very humid summer.

With that truth, as sure as we should supply clean drinking water to all Americans, we must provide reliable, affordable energy to the people of our great Nation. It is our responsibility to do so in a nation of the people and by the people and for the people. It is fundamental to who we are as a people because it is a great equalizer, and we are a society not of classes but of one people.

In contrast to this, I am concerned about President Obama's energy proposals which across the board constitute a set of major new taxes on domestically produced energy. I favor an alternative to that, the No Cost Stimulus Act of 2009.

Our goal in the energy debate should be four things. It should be ensuring affordable energy for all Americans, including middle- and low-income families, keeping energy that great positive equalizer in our society. It should be growing the economy from our own abundant resources right here at home and not creating another factor that pushes jobs out of the country to other countries. It should be to work vigilantly to achieve energy independence, doing more here at home. And No. 4, tied directly to that, it should be about ensuring our efforts are consistent with our national security interests, which is, of course, more energy independence.

Again, the President's tax proposals are big increases on domestic energy production across the board. So they work against all of those four core aims that I laid out.

To see how that happens, we can look at history, and not that far back, to President Carter. In 1980, President Jimmy Carter increased taxes on domestic energy production. He signed into law the Crude Oil Windfall Profits Tax Act. The windfall profits tax was forecasted to raise more than \$320 billion between 1980 and 1989. But a funny thing happened on the road of implementation. The reality was far different.

According to the CRS, the government collected only \$80 billion in gross tax revenue, compared to that \$320 billion projection. The CRS also found the windfall profits tax had the effect of decreasing domestic production, what we produce at home, by between 3 percent and 6 percent, thereby increasing our dependence on foreign oil sources from 8 percent to 16 percent.

A side effect was declining, not increasing, tax collections. And while the tax raised considerable revenue in the initial years following its enactment, those revenues declined to almost nothing as that domestic energy industry went down as a direct result.

So here we are in 2009 and, unfortunately, it seems to be back to the future, a repeat of that sad experience. The Obama administration is, again, proposing to increase taxes across the board in major ways on domestic energy production and on domestic utilities, even in the midst of this serious recession. In this case, the President imagines different results from the same policy of the 1980s, but I am afraid the result will be more of the same.

Let's look at exactly what these energy proposals, which are just tax increases, are.

First, a huge category of President Obama's proposals is his so-called cap-and-trade plan. Let's make no mistake. Cap and trade is a phrase in vogue. It has gained a lot of vogue. What it is about, again, is a tax on domestic utilities and domestic energy. It is a carbon tax. It is an energy tax, pure and simple. You can dress it up, you can muddy it up, you can try to confuse the public, but it is a tax on utilities, and it is a tax on energy.

Independent analysis by the Heritage Foundation estimates that the economic impact of the Waxman-Markey bill by 2035 will be enormous and it will be negative: reduce aggregate gross domestic product by \$7.4 trillion; destroy 844,000 jobs, with peak years seeing unemployment rise by over 1.9 million jobs; raise electricity rates 90 percent after adjusting for inflation; raise gasoline prices by 74 percent after adjusting for inflation; raise natural gas that goes to residential customers, American families, by 55 percent; raise an average family's annual energy bill by \$1,500. That is a \$1,500 a year tax bill on working-class, middle-class families. Increase the Federal debt by 29 percent after adjusting for inflation. That is \$33,400 of additional Federal debt per person, again, after adjusting for inflation.

Some might say this is a conservative think tank, this is biased. There is independent analysis, and in this case it comes from President Obama. The President spoke very directly on the campaign trail. It was at a private editorial board meeting, but it was on the record, and we have his direct quote that said that utility rates would skyrocket—"skyrocket," his word—and he is right.

In addition to his carbon tax, cap-and-trade proposals, President Obama has other energy taxes on domestic production, right when we should be increasing domestic production, increasing that bridge to the future, energy independence. He has tax proposals on domestic production that would do the opposite: \$62 billion of new taxes on the so-called LIFO reserve through a change in accounting rules, bottom line, a \$62 billion tax increase on domestic energy; \$1 billion of new taxes by increasing the amortization period to 7 years for oil and natural gas production, bottom line, a billion-dollar tax increase on domestic energy; \$5 bil-

lion tax increase with new taxes on a significant part of domestic oil and gas production, 25 percent of oil production in the United States and 15 percent of gas; \$49 billion of new taxes through the repealing of the passive loss exception for oil and gas properties; \$13 billion of new taxes by repealing section 199 of the manufacturers tax deduction; \$175 billion of new taxes by forcing States into a renewable portfolio system which is particularly difficult and particularly troubling for States such as Louisiana which has many resources and many renewable resources but not the specific ones demanded by that portfolio; and \$17 billion of new taxes by reinstating the Superfund excise and income taxes—again, a package of enormous tax increases all on domestic energy production.

If you raise taxes in a major, significant way on domestic energy production, do you think that production is going to go up or go down? The answer is obvious. In theory, it is going to go down. And the answer is obvious, in history, in practice, it is going to go down. It did go down with the Jimmy Carter windfall profits tax, which is small compared to this huge onslaught of new taxes on our utility bills and on domestic production.

Energy Secretary Chu has argued clearly in the past that if the United States wanted to reduce its carbon emissions, policymakers would have to find a way to increase petrol prices, as he put it, to levels like we see in Europe. It is not a secret. Secretary Chu is saying we need to increase taxes on oil, the cost of gasoline. President Obama said on the campaign trail that we need to do a carbon tax, cap and trade, that will, of course, cause utility bills to skyrocket. This is not a secret.

Let me go back to what I think the four main goals of a sound energy policy are and are these major energy tax increases doing any of it.

No. 1, ensuring affordable energy for all Americans, including middle- and low-income Americans. The President is doing the opposite. He is taking away a great equalizer of our society. He is putting an enormous burden on working-class, middle-class families.

No. 2, growing the economy from our own abundant resources and trying to stop the outsourcing of jobs to other countries. The President's plan is doing the opposite of that. He is putting taxes on at a time of a severe recession, and he is putting a tax on domestic energy which is going to increase the flow of jobs elsewhere.

No. 3, working vigilantly to achieve energy independence. It is common sense that if you dramatically increase the taxes on energy here, you are going to increase energy dependence, not increase independence.

No. 4, we need to ensure that our efforts are consistent with our national security interests. We need to increase our energy independence consistent with national security. Taxing energy here will do exactly the opposite.

It is one thing to say no to bad ideas, but with that comes a responsibility to lay out clear, positive alternatives that provide a positive answer. I have done that, working with many other colleagues, in introducing our No Cost Stimulus Act of 2009. Again, I introduced this bill with 14 other Senators and with 30 House Members about 2 months ago.

As the title suggests, this bill is a comprehensive economic recovery bill. It is a solid energy bill that does not require borrowing more money from China or anywhere else, increasing the outflow of taxpayer dollars in a time of already historic deficits.

The No Cost Stimulus Act of 2009 can achieve a number of positive outcomes—again, without further indebting our kids and grandkids—and specifically, it does six major things:

First, we can save or create more than 2 million long-term, sustainable, well-paying jobs.

Second, we can dramatically increase GDP that could exceed \$10 trillion over the next 30 years.

Third, we would reduce the cost of energy to manufacturers, all U.S. businesses, and American families, including low-income families. On top of helping businesses compete internationally, that reduces the cost of a key input so that resources may be used on other purchases or employee hiring.

Fourth, we would have a real, positive impact on low-income families, as this is the equivalent of receiving a major stimulus check. As the price of energy decreases, a family may direct the extra money toward other needs.

Fifth, we can achieve these goals while not incurring huge amounts of new debt to foreign governments or to anyone else, leveraged against our kids' and grandkids' futures.

Sixth, this bill will have a direct and significant impact on reducing our dependence on foreign oil.

So again, you go back to those four main goals I laid out for sound energy policy. The No Cost Stimulus Act moves us toward those goals, unlike the President's energy tax proposals, which move us away from all of those goals.

What does the No Cost Stimulus Act do exactly? It does three big things:

No. 1, it increases domestic production of energy. We produce more energy here at home on the Outer Continental Shelf, in Alaska, and from oil shale. We have enormous energy resources in this country. We are the only country in the world that has major resources but puts 95 percent of them off limits. This bill would change that.

No. 2—and this is very important—this bill would invest in alternative and renewable energy. No one, including me, thinks our long-term future in energy is oil and gas. We need a new alternative, renewable energy future, and this bill will help build that by actually creating new Federal revenue

through the royalty on energy production and devoting most of it to those investments in alternative and renewable energies. Again, we do this without borrowing money by establishing a renewable and alternative energy trust fund and putting funds from domestic production royalties into that trust fund. In doing so, we do more for alternative and renewable energy than President Obama's entire \$800 billion stimulus plan.

No. 3, the third big thing the No Cost Stimulus Act of 2009 does, it streamlines the regulatory burden and clarifies environmental law. We streamline the review process for new nuclear energy production, and we prevent the abuse of environmental laws, which were not meant to be used as a way to simply stop and block all of these projects.

Madam President, I wish to close as I began. Energy is a big topic, and ensuring affordable, reliable energy is central to the core of who we are in this country because energy is a great equalizer. We are a society of equals. We have never had distinct classes. We have always had great mobility. You can make it in America. If you are successful, you can do anything. You are not born into a class. You are not limited in that way. Affordable, reliable energy is a key equalizer that ensures that American way of life.

So what should energy policy be about? It should be about four things:

No. 1, ensuring affordable energy for all Americans, particularly middle- and low-income families, so that we keep that great equalizer in the center of our society, in the center of our economy.

No. 2, it should be a way to grow the economy with our abundant domestic resources, particularly as we need to get out of this serious recession.

No. 3, good energy policy should work us toward energy independence so we do more here at home and we rely less on foreign sources.

No. 4, a good energy policy should ensure that it is consistent with national security, which, of course, increasing our energy independence is.

I truly believe the No Cost Stimulus Act of 2009 achieves all four of those broad goals in a very significant way. Just as clearly, President Obama's energy tax proposals, which across the board increase the tax burden on utility bills, on domestic energy, on domestic energy production, move us in the opposite direction.

President Obama said very recently about GM, in the midst of the latest GM bailout, that:

GM has been buried under an unsustainable mountain of debt, and piling an irresponsibly large debt on top of the new GM would mean simply repeating the mistakes of the past.

There is an old saying: What is good for GM is good for the country. I would like to modify that to say: What is true for GM is true for the country. So why are we piling an irresponsibly large

debt on top of our existing historically high levels of debt in this country? We need another way. We need something like the No Cost Stimulus Act of 2009. We need to learn again how to generate wealth and a healthy economy. We need to refocus here at home on our abundant energy resources. And that is the way we can have a sound energy policy that meets those four crucial goals I mentioned and allow us to work out of this severe recession—not by borrowing more from the Chinese, not by spending more taxpayer dollars—and it is all borrowed money right now—but focusing here at home on our own resources, on our own people, on good sustainable jobs we can build here toward a prosperous future and toward a new energy future.

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

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

The legislative clerk proceeded to call the roll.

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

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

THE FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. LIEBERMAN. Madam President, I rise today to describe and explain my amendment to H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The central purpose of this legislation is to give the Food and Drug Administration the authority to regulate tobacco products. I support the bill's goals and am an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products under H.R. 1256 passes muster under budget rules only because of the increase in tax revenues generated by one federal employee retirement program, I want to make sure that the overall retirement system treats federal employees fairly. To accomplish this, I and colleagues on the Homeland Security and Governmental Affairs Committee—Senators COLLINS, AKAKA, and VOINOVICH—have developed this bipartisan amendment to make a number of much-needed corrections and improvements to the federal employee retirement program. In addition to Senators COLLINS, AKAKA, and VOINOVICH, I would also like to thank Senators MURKOWSKI, MIKULSKI, INOUE, and BEGICH, who have all asked to be included as cosponsors of this amendment.

The central purpose of our amendment is to bring justice to federal employees who—because of quirks in the law, errors, and oversight—have lost out on retirement benefits for which they would otherwise be eligible. Many of the provisions of this amendment have the very strong support of federal

employee unions and organizations of managers.

Our amendment would add back into the pending substitute amendment several of the reforms to the federal retirement system that were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I have prepared a complete written summary of these provisions, and I will ask consent that it be printed in the RECORD. Now I want to focus on those that are most significant.

One of the most important reforms in our amendment would lift retirement penalties now experienced by long-time federal employees under the Civil Service Retirement System who want to switch to part-time work at the end of their careers. The amount of an employee's annuity is based, in part, on the highest rate of salary that the employee received over a 3-year period. Because an employee's salary ordinarily reaches its highest rate at the end of the employee's career, employees count on that end-of-career work period to help determine the amount of annuity. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for the part-time work, is only a fraction of the rate of salary received. With retirement credit for part-time work so reduced, many employees have little incentive to stay on part-time, and simply opt to retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee's annuity. This would remove the disincentive that now discourages federal employees near retirement from working on a part-time basis while phasing into retirement.

Our amendment is not only fair to the employee, but also good for the government, by helping to retain valuable employees who wish to phase down their work but to continue offering their talent and experience to serve the government and to train future leaders. This is one of the provisions in our amendment that was passed by the House as part of its version of H.R. 1256, and this provision is also very similar to a bill introduced by Senator VOINOVICH, S. 469, which was unanimously approved by the Homeland Security and Governmental Affairs Committee late last month by voice vote.

A second provision in our amendment would correct an injustice in calculating the retirement dates and benefits for nonjudicial employees of the DC courts, the Court Services and Offender Supervision Agency and the DC

Public Defender Service. Legislation in 1997 and 1998 converted these individuals from being employees of non-federal agencies into being federal employees. The converted employees were brought under the Federal Employees Retirement System, which essentially began calculating their eligibility for retirement and the amount of their benefits anew, without recognition of their previous service.

Some employees of these three agencies could have retired years ago had they received credit for their years of service with the DC government. Instead, they are still serving to make up for time lost when they were transferred into the federal service. One provision in our amendment would simply require that the time served by these employees before their date of transfer from DC to federal service will count towards their overall federal retirement eligibility as "creditable service." This is a fair and just correction.

Another important provision in our amendment will equalize the treatment of participants in the old Civil Service Retirement System and participants in the newer Federal Employees' Retirement System. This provision would allow FERS participants to apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefit—something Civil Service Retirement System participants are already allowed to do. This reform would not only bring equity to all federal employees participating in the two retirement plans. It also would help reduce the inevitable absenteeism that results from the current "use it or lose it" policy for sick leave under the FERS program.

Our amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits because they did not receive what they were promised when hired. This provision would restore this group of agents and officers to the retirement system they were promised and paid into over 22 years ago.

Historically, Secret Service nonuniformed agents, like other federal employees, joined the Federal Civil Service Retirement System, whereas uniformed officers of the Secret Service were covered under the District of Columbia Police and Fire Retirement Plan, because their division had originally begun as an adjunct to the DC police force. Nonuniformed agents who accrued 10 years of protection time could also transfer into the DC plan, and many did so, because the DC plan is more generous and more flexible than the federal system.

New-hires to the Secret Service continued to be promised that they could retire under the DC Metro plan up until 1987. In that year, when the Federal Employee Retirement System was created to replace the older CSRS, the law did not permit Secret Service

agents hired between the years of 1984 and 1987 to opt into the DC plan, but instead required them to be covered by the new federal retirement system.

We ask a tremendous amount from the men and women of the Secret Service, many of whom have some of the most challenging jobs within the federal government. It is not too much to expect that the federal government abide by its promises in return. Accordingly, this amendment will enable the affected Secret Service agents to convert to the DC Metro plan if they so choose.

Finally, our amendment incorporates two additional bipartisan reforms of the federal pay and benefits system that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator AKAKA, and cosponsored by Senators MURKOWSKI, INOUE, and BEGICH, called the "Non-Foreign Area Retirement Equity Assurance Act of 2009." This legislation will bring federal employees in Hawaii, Alaska, and other "nonforeign" U.S. territories in line with federal employees in the lower 48 states with regard to pay and pension. Federal employees in the lower 48 states receive locality pay, which is taxed and counts towards employees' pensions. Federal employees in nonforeign areas instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

This puts nonforeign area employees at a substantial disadvantage when it comes time to retire. To correct this situation, the legislation would move federal employees in nonforeign areas from the nonforeign COLA system to locality pay that would both be taxed and count toward pensions. Locality pay would be phased in over a 3-year period and the nonforeign COLA would be phased out. Although all future employees would be covered by the act, existing employees in nonforeign areas could choose to continue receiving the nonforeign COLA rather than being transitioned to locality pay.

We have also included in this amendment a bill, S. 629, which was introduced by Senator COLLINS and cosponsored by Senators VOINOVICH, KOHL, and MCCASKILL, named the "Part-Time Reemployment of Annuitants Act of 2009."

This legislation would authorize Federal agencies to reemploy retired Federal employees, under certain limited conditions, without offset of annuity against salary. The purpose is to help agencies weather the upcoming wave of retirements by hiring back retirees on a limited basis.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule, and our amendment would grant all agencies the power to hire annuitants at full salary and annuity if certain conditions are met.

The bill includes several limits intended to ensure that the authority is used for the intended purpose, to fill particular staffing gaps and needs. A reemployed individual may not work more than a maximum of 520 hours—i.e., 65 days—in the first 6 months after retirement, or more than 1,040 hours—i.e., 130 days—in any 12-month period, or exceed a total of 3,120 hours—i.e., 390 days—for any one individual. These limits represent working at about half time.

Moreover, reemployed annuitants at an agency may not comprise more than 2.5 percent of the agency's total workforce, and may not exceed 1 percent of the agency's total workforce unless the agency head submits a written justification to OPM and Congress. The legislation would sunset after 5 years.

Federal employees, wherever they work, are a dedicated group of people who are asked to make a number of sacrifices for the sake of their country.

Those in the Secret Service, obviously, sacrifice more, sometimes with their lives. Our amendment will update and bring retirement parity and fairness to many federal employees. This amendment will provide a measure of justice for hundreds of thousands of public servants. I urge my colleagues to support this amendment.

Madam President, to reiterate, I rise today to describe and explain and speak on behalf of the bipartisan amendment to this underlying bill I am proud to introduce, along with Senator COLLINS, Senator AKAKA, and Senator VOINOVICH. The central purpose of the legislation before us, of course, is to give the Food and Drug Administration the authority to regulate tobacco products. I support the aims of the bill strongly and I am proud to be an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products is estimated to result in some reduction in tobacco excise taxes, the bill before us, H.R. 1256, passes muster under budget rules only because of an increase in revenues generated by a change that is made in the proposal in the Federal Employee Retirement System. The aim of Senator COLLINS, Senator AKAKA, Senator VOINOVICH, and myself, in proposing this amendment is to make sure that while that revenue-raising change occurs, that the overall retirement system treats Federal employees as fairly as possible. So we have developed this bipartisan amendment to make a number of corrections and improvements in the existing Federal employee program.

In addition to the Senators I have mentioned, I also thank Senators MURKOWSKI, MIKULSKI, INOUE, and BEGICH, who have also become cosponsors of this amendment.

The central purpose of the amendment is to bring justice to Federal employees who, because of quirks in the law—frankly of errors or oversights—have lost out on retirement benefits for which they would otherwise be eligible.

Many of the provisions of this amendment have the very strong support of the groups representing Federal employees and managers as well. Our amendment would add back into the pending substitute amendment several of the reforms to the Federal retirement system that actually were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the Federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I should state here for the record that the committee now has very broad jurisdiction which has been added to, in recent years, when we became the Homeland Security Committee, but in the original governmental affairs jurisdiction of the committee we not only have general oversight of the activities of government, of the Federal Government, this is the committee responsible for the civil service, for those who work every day to enable our Federal Government to work for the citizens of our country.

I have a complete written summary of the provisions that are in this amendment. I will offer it a little bit later, but now I want to focus on a few of the most significant changes.

One of the most important reforms in the amendment would lift retirement penalties now experienced by long-time Federal employees under the Civil Service Retirement System when they want to switch to part-time work at the end of their careers. It is very important, as we face a time of increasing retirement from Federal service and increasing demand on Federal service. The amount of an employee's annuity is based in part on the highest rate of salary an employee received over a 3-year period. Although an employee's salary naturally reaches its highest rate at the end of an employee's career, employees count on that end-of-career work period to determine the amount of annuity they will live on in retirement. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for part-time work, is only a fraction of the rate of salary received.

With retirement credit for part-time work so reduced, a lot of employees have very little incentive to stay on part time when we need them to do so, and they will, therefore, retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee's annuity. That would remove the disincentive to continue to serve that now exists.

A second provision in our amendment would correct an injustice in calcu-

lating the retirement dates and benefits for nonjudicial employees of the D.C. courts, the Court Services and Offender Supervision Agency, and D.C. Public Defender Service. These are fair and just corrections.

Another important provision in the amendment would equalize the treatment of participants in the Civil Service Retirement System with treatment of participants in the newer Federal Employees Retirement System. To the average American, this vocabulary is probably not too comprehensible. To the millions of Federal employees, the difference between the CSRS and FERS is quite well understood and significant. The provision that we have in this amendment would allow for its participants to apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefits—something Civil Service Retirement System participants are already allowed to do. So that is an inequity this amendment would eliminate.

The amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits because they did not receive what they were promised when hired. This provision would restore this small group of agents and officers to the retirement system that they were promised and paid into over 22 years ago. We obviously ask so much of the men and women of the Secret Service that we should treat them fairly.

Finally, our amendment incorporates those two additional bipartisan reforms of the Federal Pay and Benefit System that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator AKAKA, who I know is on the floor and I believe may speak on this when I am done, cosponsored by Senators MURKOWSKI, INOUE, and BEGICH, called the Non-Foreign Area Retirement Equity Assurance Act of 2009. These obviously are colleagues from Alaska and Hawaii, so it has unique relevance there. The legislation would bring Federal employees in Hawaii and Alaska and other "nonforeign" U.S. territories in line with Federal employees in the lower 48 States, as we call them, with regard to pay and pension. Federal employees in the lower 48 receive locality pay, which is taxed and counts toward employee pensions. Federal employees in nonforeign areas, such as Alaska and Hawaii, instead receive a nonforeign cost of living allowance, which is neither taxed nor counted toward pensions.

This puts Federal workers in places such as Hawaii and Alaska at a substantial disadvantage when it comes to retirement. To correct this situation, this legislation would remove Federal employees in nonforeign areas—Alaska, Hawaii, et cetera—from the nonforeign COLA system to locality pay that

would both be taxed and would count toward pensions.

We have also included in this amendment a bill, S. 629, which was introduced by Senator COLLINS and cosponsored by Senators VOINOVICH, KOHL, and MCCASKILL, which is called the Part-Time Reemployment of Annuity Act of 2009. This is relative to something I talked about earlier. It would authorize Federal agencies to reemploy retired Federal employees under certain limited conditions without offset of annuity against salary. In other words, we have some retired employees who, after a long period of service, have built up specialized skills we need and will need more and more in the years ahead, as a generation retires from Federal service. Yet now there is an economic disincentive for those retired employees to come back part time or for limited periods of time to serve the American people.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule. Our amendment would grant all agencies the power to hire annuitants at full salary, while maintaining their full retirement benefit, if certain conditions are met.

The bill includes several limits to ensure that this authority is used for the intended purpose, which is to fill particular staffing gaps and needs and not used to frustrate the desire of a new generation of Federal workers to come in. A reemployed individual may not work more than a maximum of 520 hours, 65 days, in the first 6 months after retirement or more than 1,040 hours, 130 days, in any 12-month period or exceed a total of 390 days for any one individual for the entirety of their retirement.

Each of these proposals that are part of this amendment treat Federal employees fairly. They correct inequities; in some cases, oversights. The fact is, in many countries of the world, developed countries particularly, one of the most respected professions, lines of work one can go into is civil service, what we call the civil service. We are not where we should be in this country. These are the people who make the Federal Government work. We should treat them fairly and, in this unique circumstance, when we are taking some more out as a result of a change in the Federal retirement system to offset the loss of excise taxes on tobacco, there is some money left over which we can use to correct these inequities on Federal employees. That is why I am so pleased this is a bipartisan amendment.

I hope, when it comes to a vote, it will receive overwhelming bipartisan support.

I thank Senator AKAKA, who is an extraordinary Senator in general but has been a wonderful, productive, contributing member of this committee and a great advocate for the most progressive

human capital management; that is, the best management of our Federal workforce.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. AKAKA. Madam President, I ask unanimous consent to speak as in morning business for 10 minutes.

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

Madam President, I thank Chairman LIEBERMAN for his leadership. He has been doing a grand job in moving legislation on issues of homeland security. I rise today to support the Family Smoking Prevention and Tobacco Control Act. Tobacco products kill approximately 400,000 people each year. The FDA must be provided with the authority to regulate deadly tobacco products, limit advertising, and further restrict children's access to tobacco.

I commend my friend from Massachusetts, Senator KENNEDY, for his long-term commitment to advancing this vital public health legislation, and I thank my friend from Connecticut, Senator DODD, for managing this bill. I am proud to support their efforts.

Included in the bill are a number of Federal retirement provisions that go a long way to support retirement security and provide more options for Federal employees.

The provisions in the managers' amendment would make four changes to enhance the Thrift Savings Plan. Federal employees would be automatically enrolled in the TSP with the option of opting out of the program. Federal employees also will be eligible for immediate matching TSP contributions from their employing agency. In addition, the Thrift Savings Board will have the option to create a mutual fund window during which employees will be able to select mutual funds that are appropriate for their investment needs. Finally, employees will be allowed to invest in a Roth IRA through the TSP.

As chairman of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I also am proud to support my other good friend from Connecticut, Senator LIEBERMAN, in offering an amendment to support additional retirement security and equity provisions for the Federal workforce.

Most important to my home State of Hawaii, the amendment provides needed retirement equity to Federal employees in Hawaii, Alaska, and the territories. Nearly 20,000 Federal employees in Hawaii, and another 30,000 Federal employees in Alaska and the territories, currently receive a cost of living allowance, which is not taxed and does not count for retirement purposes.

Because of this, workers in these areas retire with significantly lower annuities than their counterparts in the 48 States and DC.

COLA rates are scheduled to go down later this year along with the pay of these nearly 50,000 Federal employees if we do not provide this fix.

In 2007, the Office of Personnel Management offered a proposal to correct this retirement inequity. After soliciting input from all affected employees, I introduced the Non-Foreign Area Retirement Equity Assurance Act. The bill passed the Senate by unanimous consent in October 2008. Unfortunately, the House did not have time to consider the bill before adjournment.

I reintroduced this as S. 507, which is included in this amendment, with Senators MURKOWSKI, INOUE, and BEGICH. It is nearly identical to the bill that passed the Senate last year.

This is a bipartisan effort to transition employees in Hawaii, Alaska, and the territories to the same locality pay system used in the rest of the United States, while protecting employees' take-home pay in the process. In this current economic climate we must be careful not to reduce employees' pay.

The measure passed unanimously through committee on April 1. OPM recently sent Congress a letter asking for prompt, favorable action on this measure.

This is one of the most important issues facing Federal workers in Hawaii, Alaska, and the territories. I urge my colleagues to support this change.

One of the other provisions in the amendment corrects how employees' annuities are calculated for part-time service under the Civil Service Retirement System. This provision treats Federal employees under CSRS the same way they are treated under the newer Federal Employee Retirement System. Eliminating this unnecessary disparity is a matter of fairness and correction.

Similarly, this amendment includes a provision to treat unused sick leave the same under the new retirement system as under the old system.

The Congressional Research Service recently found that FERS employees within 2 years of retirement eligibility used 25 percent more sick leave than CSRS employees within 2 years of retirement. OPM also found that the disparity in sick leave usage costs the Federal Government approximately \$68 million in productivity each year.

This solution was proposed by Federal managers who wanted additional tools to build a more efficient and productive workplace and to provide employees with an incentive Congress should have retained years ago.

This amendment also will make good on the recruitment promise made to a small group of Secret Service agents. Approximately 180 Secret Service officers, hired during 1984 through 1986, were promised access to the DC retirement plan. This amendment would provide it.

The majority of these retirement reform provisions have the endorsement of all the major Federal employee groups including: the American Federation of Government Employees, the National Treasury Employees Union, the National Active and Retired Federal Employee Association, the Senior

Executives Association, the Federal Managers Association, the Government Managers Coalition, and the list goes on.

I strongly encourage my colleagues to support this bill and the Federal retirement reform provisions.

I thank Chairman LIEBERMAN for his support and his leadership.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mrs. HAGAN. Madam President, I ask unanimous consent to speak in morning business.

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

Mrs. HAGAN. Thank you.

Madam President, I rise in opposition to the Family Smoking Prevention and Tobacco Control Act that is before us. While the bill purports to reduce smoking among teenagers and to regulate tobacco products, it goes far beyond these two goals.

This broad, sweeping legislation will further devastate the economy of North Carolina and the lives of many of my constituents. In my State, we have 12,000 tobacco farmers and 65,700 jobs tied to this industry. It also generates close to \$600 million annually in farm income. And the economic impact of tobacco in North Carolina is \$7 billion. We know we are in the midst of an economic crisis, and the bill before us today will further impact the economy in North Carolina by putting thousands of people out of work and exacerbating the already high levels of unemployment throughout our State.

Many aspects of the bill will make it impossible for tobacco manufacturers to earn a living. For example, the labeling requirements in the bill will present a burdensome and costly obstacle for many of the smaller tobacco manufacturers, as will the marketing and advertising restrictions in this bill.

But I am also concerned that the bill will allow the FDA to develop standards for tobacco products for which technology now may not exist. For example, the bill requires the FDA to establish standards for the reduction or elimination of certain components, including smoke components. The problem is that many of these components are naturally found in the tobacco leaf and technology may not be available to extract these natural—they are not artificial—components. Allowing the FDA to develop unattainable standards will put farmers in an outright impossible position—again, hurting generation-old families and businesses in North Carolina.

But let me make it clear that the bill is going to make it more difficult for

domestic tobacco manufacturers to compete with foreign tobacco manufacturers who are not going to be forced by the FDA to abide by the same standards as our domestic manufacturers.

For example, the bill requires that tobacco products be tested. I want to offer an amendment that is going to require that this testing be done in a laboratory in the United States because it is hard to fathom that the FDA is going to be allowed into foreign manufacturing facilities.

I believe we need to be cognizant of the burdens these new standards will impose on our domestic tobacco manufacturers in terms of greater costs to implement the reporting, testing, and labeling requirements. And we have to ensure that these costs are not going to put our domestic manufacturers at a total disadvantage with foreign competitors.

The bottom line is that in North Carolina, people are working hard to make a living. Some 65,000 work in this industry, and 12,000 work on our wonderful tobacco farms. In this economic downturn, I do not think now is the time to pass a bill that is going to disproportionately impact so many people in my State.

I have three amendments I wish to discuss at this point. I understand the majority leader is working on an agreement with the Republican leader so that these amendments will be called up at a later date.

The first amendment I wish to discuss is amendment No. 1249, requiring that the technology exist before the FDA can develop standards. This is an amendment I wish to have serious consideration given.

This amendment, No. 1249, simply clarifies that the FDA cannot establish technological standards until they have determined that the technology is available to meet that particular standard.

The bill does not limit the FDA's authority to reduce or ban compounds found naturally in tobacco leaf. Rather, this bill gives the FDA the authority to require the removal of harmful components from tobacco products, including components that are native to the tobacco leaf. Because of this, many of the new requirements will only be achievable through dramatic changes in tobacco farming operations and could affect the growing and curing of the actual tobacco leaf. As such, this bill allows the FDA to establish standards on tobacco products that may not be achievable with the technology that exists. While the bill does include language that would require the FDA to consider technical achievability, it does not go far enough to ensure that the technology does, in fact, exist.

My amendment would require the FDA to actually establish that the technology is available before it sets the standards. This approach is similar to the standards the EPA must meet to implement environmental laws. I believe if we are going to put 65,700 jobs

on the line in North Carolina, we certainly have to ensure that the technology is available to give those people and employers and employees a chance to adhere to the FDA standards.

I urge support of this amendment.

Madam President, I also wish to discuss amendment No. 1253, disallowing FDA regulation of the actual tobacco farmer.

This amendment would clarify that the FDA does not have the authority to regulate the production of tobacco or a farmer who produces tobacco, either directly or indirectly. The underlying bill does state that the FDA does not have authority over the tobacco leaf that is not in the possession of the manufacturer and that the FDA does not have the authority to enter onto a farm owned by a producer of tobacco. But the bill provides an exception to allow the FDA to regulate activities by a manufacturer that affects the actual production. This is a backdoor way of getting at the tobacco grower because nearly every activity by the tobacco manufacturer affects the production of the tobacco leaf.

Further, the underlying bill would allow the FDA to indirectly place mandates on a tobacco producer by placing mandates on a manufacturer. It is unrealistic to expect that mandating standards on tobacco manufacturers will not trickle down to drastically impact the actual farmer and their operations. I believe the exception in this bill is too broad.

My amendment drops this exception. This amendment is critical to ensure that as new standards and regulations are imposed on tobacco manufacturers, farmers and their families will be protected.

Again, there are 12,000 tobacco farmers in North Carolina who are on the line. Their livelihoods are on the line. We need to be sure they are able to have a playing field they can work with.

I urge support of this amendment.

Madam President, the third amendment I want to discuss is amendment No. 1252, which has to do with testing in U.S. laboratories.

This bill before us today requires foreign-grown tobacco to meet the same standards applied to domestically grown tobacco. But the problem is, the bill does not contain language suggesting how the FDA is going to enforce this. I sincerely doubt we will find any foreign tobacco manufacturers willing to invite the FDA into their companies to inspect and test their tobacco products. And I doubt we will find many foreign testing facilities that are willing to submit to U.S. standards.

My amendment addresses this concern by requiring, simply, that any testing of tobacco products required in this bill be conducted in a U.S. laboratory. Undoubtedly, the FDA is going to have a difficult time regulating products coming in from overseas. We do not have to look very far into FDA's

past to figure that out. The solution to this problem is to require tobacco products intended for domestic consumption to be, simply, tested in our country.

This requirement would help ensure that domestic tobacco manufacturers are not put at a competitive disadvantage to foreign manufacturers, and that foreign manufacturers do not get preferential treatment because domestic manufacturers would be subject to stricter testing requirements. It would also help to ensure that foreign manufacturers are not simply dumping unsafe products into the U.S. market.

In this time of economic uncertainty, I think we have to do what we can to protect and create American jobs. Requiring tobacco products to be tested in the United States would certainly help keep those jobs here at home.

Once again, I urge support and consideration of this amendment.

Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURR. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. We are.

Mr. BURR. Mr. President, I ask unanimous consent to speak for up to 30 minutes.

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

Mr. BURR. I thank the Presiding Officer.

Mr. President, later this morning, today, we will go back on the tobacco FDA bill. As one who has tried to educate Members on why this is a flawed bill, let me state I am fighting an uphill battle. I have been all week.

I wish to thank my friends and colleagues who have come to the floor over the last days to support their belief that this is misguided, not the regulation, but the fact that we are concentrating this in the Food and Drug Administration, an agency that has the trust and confidence of the American people that the gold standard of proving safety and efficacy for all drugs, devices, biologics, and cosmetics, and food safety is their No. 1 mission. But my colleagues know this has been an uphill fight, too. I have tried over the course of those days to highlight for the American public why it is bad policy. I have highlighted portions of the bill that I thought were flawed. I haven't come out and said this is the wrong thing, even though, let me remind my colleagues, this is the current flowchart for the Federal regulation of tobacco before we do anything. So for Members who come and say this industry is underregulated, let me remind them it is the Department of Transportation, the Department of the Treasury, the Department of Commerce, the

Department of Justice, the Office of the President, the Department of Health and Human Services, the Department of Education, the Department of Labor, General Services Administration, the Department of Veterans Affairs, the Federal Trade Commission, the Department of Agriculture, Environmental Protection, U.S. Postal, and the Department of Defense. Now we are going to take all of those areas of Federal regulation and we are going to condense them all into the Food and Drug Administration, which has a mission statement of proving the safety and efficacy of every product over which they have jurisdiction.

Twenty-five percent of the U.S. economy is currently regulated by the Food and Drug Administration. Americans go to bed at night after taking pills prescribed by a doctor and filled by a pharmacist with the comfort of knowing they have been approved to be safe and effective. Through this bill, we are going to dump on the Food and Drug Administration a product that is not safe and it is certainly not effective.

I have tried to point out the flaws. Heck, I have tried to point out the good things in the bill. I haven't been one-sided on it. But every time one of my colleagues from the other side of the aisle has come to speak, we have either seen charts that are 10 years old or data that is 10 years old. We have seen products that they have painted in a light that didn't even exist 10 years ago. I haven't heard a single question I have asked in this debate answered by the other side or even their opinion of what is wrong with the substitute. It has all been rhetoric.

I wish to share a story with my colleagues. This story is a news report. It was a report CNN ran on a product that is new to the market. It is called Camel Orbs. It is not a cigarette, and it is really not smokeless tobacco; it is a dissolvable tablet.

As I pointed out to my colleagues yesterday when I showed them the chart for continuum of risk, nonfiltered cigarettes have a 100-percent risk factor and filtered cigarettes have a 95-percent risk factor. As you introduce new products into the marketplace that allow individuals to move from cigarettes to other products, you reduce the risk. You reduce the risk of death and disease, and that is one of the three objectives of tobacco legislation. Youth usage should go down. Death and disease should be reduced from the standpoint of risk.

Let me come all the way over here on the chart to dissolvable tobacco. The risk is 2 percent. To bring these to market is to reduce the risk from 100 percent to 2 percent—98 percent better.

CNN ran this article on Orbs. It is a smokeless product, but I will get into that in a few minutes. For now, what you need to know is Orbs falls under the same age restrictions all tobacco products do. That means it contains no cartoon images. It must be shelved be-

hind the counter where it is out of reach of children. Heck, it is out of reach of adults. They have to physically ask for the product. By the way, you must show photo ID to buy tobacco products today. Let me say that again. You must show a photo ID to purchase tobacco products.

When CNN did their story, take a guess on the angle they took. They labeled it as candy—candy—even though it is not candy flavored. They said it was candy. They didn't mention death or disease. You would think a story on tobacco would lead with that. I haven't been shy to come to the floor and say that is the result of tobacco usage. But they didn't even go to death and disease. No, they said it was candy. That is how they labeled it.

Even though they mischaracterized the product and took people down the path they wanted to go, that wasn't the bad news of this story. The bad part of the story was they took tins of the product and they actually placed them in the candy aisle at the convenience store, right there beside the Reese's Cups and the chewing gum. Then they took footage of a young boy, I think, reaching over and picking up one of the Camel Orbs, even though this is highly illegal. Even though the convenience store could be prosecuted, and therefore they don't put tobacco products in the candy section, still CNN wanted to make their point. What a better way to make the point than to stage what the picture was. Let me say that again. What a better way to make the point than to stage that every retailer in the world out there is putting Orbs, a tobacco product, in its candy section. They portrayed Reynolds America as being deceptive and luring children. No candy. It is not going in the candy section. It is in the tobacco section where smokeless and stick smoke products are.

That is why it is so difficult. That is why the job I am on a quest for is an uphill battle. It is because nobody on that side wants to come down and talk about the policy.

The bill we are considering was written 10 years ago. No wonder we are using 10-year-old charts and 10-year-old statistics. The truth is, if you look at the statistics today, if you want to address death and disease, then accept the fact that there has to be an opportunity to reduce the risk. But what my colleagues need to know is that H.R. 1256 gives the FDA full jurisdiction over tobacco products, and it takes this category right here and it locks it in. It cements it because it grandfathered FDA from ever doing anything on the existing products that are in the marketplace: filtered cigarettes and nonfiltered cigarettes. FDA is forbidden from changing anything. The products that were sold continue to be sold. No new products can be sold.

They say there is a pathway for these products to come to market. It is a three-pronged test they have to meet. I won't dwell on the first two prongs. Let

me dwell on the third one. The third one is this: You have to prove that people who don't use tobacco products aren't likely, when this new product is introduced, to actually use this product. But the way the bill is crafted says this: You can't communicate with the public unless you have an approved product. So I ask my colleagues, if you can't communicate with the American people to find out whether they are likely to buy a product that is new to the market until that product is actually approved, then how can you fill out an application and make the claim that the American people aren't likely to use that product when they don't use tobacco products? So it is disingenuous to suggest that there is a pathway for reduced-risk products when, under the construction you make anybody go through, you can't possibly make the claim they ask you to make because you can't communicate with non-tobacco users as to whether this product would be something they would choose to use. So any claim based upon that, that this is a bill which addresses death and disease, is disingenuous at best because what it does is it locks this category. It cements those people who currently use smoke products—cigarettes—the 19.8 percent of the American people who currently smoke.

So far in this debate, I have seen charts, like everybody else, that would make your skin crawl and I have heard stats that would make your head spin. I even heard Senator SANDERS come to the floor yesterday and say tobacco manufacturers want to get you addicted to heroin. I think he misspoke, but I have to tell my colleagues I am not absolutely positive of that.

All of this follows the same conclusion: Under H.R. 1256, which is the base bill, the sponsors claim that the FDA will stop everything, that all of this will go away. And let me concede for a minute that maybe they are right, then they would have to concede that I am right—with the exception of locking this product in forever. If you lock that product in forever, then you can't make the claim that you are reducing death and disease.

I think, as I have gone through this debate and pointed out that when you look at the CDC study of 50 States and you look at the percentage of smoking prevalence in our youth, what you find is that in 48 States out of 50, the prevalence of marijuana usage is higher than the prevalence of smoking. Let me say that again. In 48 out of the 50 States, the prevalence of marijuana use is higher than the prevalence of smoking. One would conclude from that, since marijuana is illegal—it is not age-tested; it is illegal—that the usage prevalence among youth would be zero. Well, the American people aren't that foolish. They realize nothing goes to zero. But they also realize it is foolish to suggest that if you concentrate tobacco jurisdiction at the FDA, the smoking prevalence is going to go below that of marijuana because marijuana is illegal.

The fact is, putting tobacco regulation at the FDA is not going to have any impact on youth usage. What is going to have an impact on it? Actually taking the master settlement dollars from 1998, the \$280 billion the tobacco industry committed to the States, all 50 of them, for two things: one, to defray their health care costs, and two, to fund the programs of cessation to get people to quit smoking and fund the programs to make sure children never take it up. But as I pointed out, we have some States that, when the CDC annually makes its recommendations, spend as little as 3.7 percent of what the CDC told them they needed to spend of this tobacco money to make sure kids got an educational message: "Do not smoke. It kills." Now we are blaming it on the fact that they are not regulated enough today and that we can concentrate this under one Federal agency, the Food and Drug Administration, and by some magical, mythical thing that happens, youth prevalence of smoking is going to go down. No. It is going to go down when States take the money the tobacco industry gave them and they actually use it to reduce the youth usage, to make sure they never take up tobacco products, to make sure people switch from smoking products to some other form that has a better effect on death or disease.

I would love to say that my State of North Carolina devotes 100 percent of what the CDC recommends to use on cessation and youth education, but we only spend 17.3 percent of what the CDC recommended of the money we got. When you look at all of the States, though, 17 percent is pretty good. I don't know whether it was used in other States for sidewalks or for greenways. I know one thing for certain: It didn't go to try to educate young people in this country not to use tobacco products. If we want to get the youth usage down, then we have to use the tools we know work; that is, education.

I have listened to my colleagues come to the floor for weeks and make unbelievable statements. All of this has followed the same conclusion: FDA will stop all of this and FDA will put the evil tobacco out of the hands of kids. I think I have made a pretty good case that it is not going to happen, not with this legislation. The sad reality is, maybe Congress could pass a bill that does all that. That is why Senator HAGAN and I have offered a substitute. That substitute will be debated over the first half of this afternoon, and every Member will have an opportunity before the afternoon is over to vote on that substitute.

I encourage all Democrats, Republicans, and Independents to read the bill. You will find that it provides all the regulation in H.R. 1256, and more. The base bill limits print advertising to black-and-white ads. What does our substitute do? It eliminates print advertising. That magazine that mom buys that a 14- or 16-year-old daughter

may like to look at in the afternoon—under our substitute, they cannot advertise there anymore. Under H.R. 1256, they are allowed to advertise, but in black and white. In some way, they believe kids cannot read in black and white, they can only read in color. That probably tells you more about how misguided the legislation is. It is not solving the problems—death, disease, and usage. The tools are in place. We can reinforce them in a more effective way. That is what the substitute amendment, I believe, will do.

My friend from Connecticut yesterday stated that I was misguided in my belief that the FDA was not the right agency to regulate tobacco. He said the FDA was the only agency in America that had the scientific expertise to do the job. I only have one question: Does the FDA have the expertise to make tobacco safe? Again, does it have the expertise to make tobacco safe? I think the answer is, no, it doesn't. Therefore, it doesn't meet the mission statement of safety and efficacy. But that is what they are vested to do. That is what the American people believe the FDA accomplishes. To suggest that we would regulate a product that doesn't meet that threshold is, to some degree, disingenuous to the American people.

My friend from Connecticut also pointed out that my downplay of CBO's estimate on smoking reduction was misplaced. He said that while I kept using the 2-percent figure—which is all the population over 10 years—and CBO had estimated that if we pass the bill, we will reduce smoking by 2 percent over 10 years—that was 900,000 fewer smokers over 10 years, and that number was impressive. I agree that it is impressive. I think he said there would be tremendous health care savings with 900,000 fewer smokers. I am not sure if Senator DODD heard the statistics I gave that were the result of the CDC study. I said numerous times that the CDC said that if we do nothing, there is a reduction in smoking of between 2 and 4 percent per year—not over 10 years, but per year.

I ask my friend from Connecticut, what is more impressive, 900,000 or 9 million fewer smokers? By doing nothing, as CDC has said, we eliminate 9 million smokers. By passing this legislation, CBO says we eliminate 900,000 smokers. Nine million fewer smokers is what we would have if we pass the substitute, but it is not what we would have if we pass the base bill. I ask my friend from Connecticut to truly think about the health savings realized without passing the base bill and realize that, with the substitute, we might actually get to more than 9 million.

My colleague went on to say that I purposely ignore CBO's estimate that youth smoking rates will reduce by 11 percent over the next 10 years under the bill. That is the CBO projection.

Obviously, he didn't hear me earlier in the morning on this issue. I think it is great that smoking rates would decline by 11 percent over the life of the

bill. I think it is much better that they would reduce 16 percent if, in fact, the bill weren't enacted. That is what the CDC says—16 percent if you do nothing, and 11 percent if you pass H.R. 1256.

We are not saving lives with this bill. We are not reducing youth usage. If you want to save lives, you need to follow where Senator HAGAN and I are and create a harm reduction center—one that will promote harm reduction products.

If we go back to the continuum of risk chart, if you look at the 100 percent risky and 90 percent risky, it is hard to believe you reduce death and disease. The only way to do that is if you get people to give up these products and you make available products that are on this chart, but also some products that are not on this chart. In the absence of doing that, there is no way you can claim that you have actually affected death, disease, or the cost of health care.

I listened to my friend from Oregon make statement after statement about those dissolvable tobacco products that I pointed out in the CNN expose on tobacco. He repeatedly called it candy, also, even though you cannot buy it unless you are 18, and it cannot be put in the candy section—unless you are CNN and you are doing a story. He said the packaging was intentionally shaped like a cell phone to attract kids. If a cell phone doesn't work, children don't want it, let me assure you. But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective.

My friend went on to call Camel Orbs dangerous. He had no scientific basis for that claim. He quoted an 8-year-old Surgeon General warning on smokeless tobacco that said it caused cancer, but the last time I checked, Camel Orbs didn't exist back then. He said that I called harm reduction products, such as Camel Orbs, safe.

I have been on the floor 4 days, and I spoke for 2 hours 37 minutes yesterday. I might have slipped, but I don't believe I have ever referred to any tobacco product as "safe." If I did, let me retract it. I have frequently said there are products that are "less harmful." I have constantly described and made the point that if you don't move people from cigarettes to other tobacco products that allow them to make that transition, you will not reduce death and disease.

I don't think tobacco is safe, but I do believe there are products that are safer than smoking. I believe that for adults who choose to use tobacco products, they should have every option available to make sure that that product is something they can access. Compared to smoking, they do reduce death and disease.

Camel Orbs and Sticks represent a 99-percent reduction in death and disease associated with tobacco use compared to cigarettes. They don't cause lung cancer, cardiovascular disease, emphysema, or COPD.

The American Association of Public Health Physicians states that those Orbs are the most effective way to fight death and disease associated with current tobacco users. Yes, much to my amazement, the American Association of Public Health Physicians came out and endorsed the substitute to H.R. 1256. Again, yesterday, the Association of Public Health Physicians endorsed the substitute amendment to this bill.

Unlike my friend from Oregon, I have the science to back up my claim. I have the studies from Sweden, and I have looked at the documented evidence. Alternative tobacco products work in harm reduction. I will tell you what doesn't work—current cessation programs, especially the ones that are not funded in that money that was supplied to the States. The current cessation programs don't work; they have a 95-percent failure rate. So 95 percent of the people return to smoking.

Why in the world would we continue to support that as a pathway for reducing death and disease? Why wouldn't we acknowledge the science that currently exists and accept, in new policy, a policy that would in fact embrace this?

May I inquire how much time I have left?

The PRESIDING OFFICER. Four minutes.

Mr. BURR. Senators come to the floor and speak about the \$13 billion in marketing the tobacco industry spends. They fail to tell you that 95 percent of that money goes to retailers and coupons against the competition and to make them more attractively priced at retail. Only 3 percent actually went to advertising in adult venues and point of sale displays. That doesn't make it a good point.

What makes it a good point is that the tobacco industry spends a tremendous amount of money making sure that their industry is protected for those who choose to use it and are of legal age.

Last year, we taxed the tobacco industry to fund the children's health insurance program. There is a proposal on the table to tax them to pay for universal health care. Senator DODD admitted yesterday that the industry would be taxed to pay for this bill.

But that is not a good story. A good story is placing tobacco products in the candy aisle by a news organization just to make a point and then portray to the American people that these are the tactics of the tobacco industry.

I have, over 4 days now, come to the floor not to defend the tobacco industry, but to defend the FDA, because I don't believe the American people deserve us to discredit the gold standard of the FDA by putting this product under their jurisdiction and asking

them to do something they have never, ever done.

When I showed the flow chart of jurisdictions, the one missing out of the current regulatory architecture for tobacco is the FDA. Nobody can claim to me they have done this before and, therefore, this is an appropriate thing to do again. Simply, I have come to the floor in the last 4 days to debate the policy. At the end of the day, I hope Members of the Senate will weigh the policy, the points that I have made, the statistics I have produced, the evidence I have brought to the table, and if, at the end of the day, what you are attempting to do is reduce death and disease, reduce youth usage, I hope I have made the case to you that you should not pass H.R. 1256.

This afternoon, before there is an opportunity to vote, I hope to make the case that you should support the Hagan-Burr substitute. I hope I have made the case to most that even if the choice comes down to passage of H.R. 1256 or nothing, that the CDC report says if you want to address a reduction in death and disease, the fastest way to get there is to do nothing if, in fact, your only choice is to pass H.R. 1256.

Once again, I thank my colleagues for their patience as I come to the floor to try to educate and provide facts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I unanimous consent to speak in morning business for 30 minutes.

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

Mr. DURBIN. Mr. President, first, I will address the issue pending on the floor of the Senate, which is the issue of whether we are going to have the FDA regulate tobacco.

The FDA, historically, focuses on the obvious—food and drugs. Over the years, we have expected from them that they would do their job and make sure, as much as humanly possible, that American consumers would not be exposed to dangerous food products or dangerous drugs and medicine. Sometimes they have failed us, but most of the time they do the job pretty well.

The way they do their job, when it comes to food, is pretty obvious when you go to the grocery store. A consumer buying a pound of spaghetti can grab the box or bag and look at the label and find out the contents, including a nutrition square that talks about carbohydrates, fat, and calories, which people are concerned about before making choices.

When it comes to medicines and drugs, the Food and Drug Administration goes a step further. They require that products that are sold in the United States be both safe and effective. If you are going to sell a drug that is supposed to lower your cholesterol, the Food and Drug Administration wants it tested to make sure it does not hurt you, No. 1, and, No. 2, that it does what it is supposed to do.

So over the years, for almost 100 years, the Food and Drug Administration has created a safety net for American consumers so that the things we purchase, at least by that agency and a few other Federal agencies, have some review before the consumer purchases it.

Then along comes tobacco, and the tobacco industry has argued for as long as this issue has been going on that they should not be covered by the Food and Drug Administration. They say: We are not food. Nobody eats tobacco for nutrition or other purposes. And we are not a drug. We are just tobacco leaves that are ground up, put in a little paper cylinder that people enjoy smoking or maybe chewing. That is all it is about.

For the longest time, they were exempt from the Food and Drug Administration asking the most basic questions. For example: What is in your product? If you believe it is just tobacco leaf ground up and stuck in paper, you are wrong. It turns out that tobacco companies learned a long time ago that if they added chemicals to the cigarettes, they could get more consumer satisfaction, more consumer use, and people buying more of their product.

What did they add? They learned a long time ago that the tricky part of tobacco is nicotine. Nicotine is a drug naturally occurring in tobacco which, if you smoke it, your body starts to crave it, and with that craving and that demand of your body each day for more and more of the chemical, you smoke more and more. Nicotine, craving, leading to an addiction.

I don't use that word lightly. I have seen people who are addicted to tobacco products—virtually all of us have—folks who just cannot quit. They try everything—hypnosis, patches, lectures, you name it—and they cannot quit. They crave that nicotine chemical.

The tobacco companies learned a long time ago that if they added more nicotine to those tobacco leaves than naturally comes out of them, the people get more addicted. It makes it more difficult for them to quit. So they started piling more nicotine into the cigarette. But that was not the end of it.

They also said: The first time a kid or somebody picks up a cigarette and takes a big drag of it, often they cough because their body is saying: What are you doing to me? You are jamming that smoke into my lungs? That doesn't belong there. They found other chemicals that they could add to cigarettes which would reduce the body's rejection and would make it more pleasant to the taste, and so they pumped those chemicals in as well. Then came a whole soup of chemicals that they added for any number of reasons.

Obviously, when you buy a pack of cigarettes, if you want to know what is in the cigarette and take a look at the

package, you will find there is no disclosure whatsoever. None. You don't know what is in there. All you know is this is paper and tobacco to start with, but you don't have a clue that there is more nicotine or other chemicals added. And you certainly don't have a warning on the package that some of the chemicals they stick in cigarettes literally cause cancer. It isn't bad enough that burning tobacco and inhaling the smoke can cause cancer, there are other chemicals that are carcinogenic added by tobacco companies because they think it makes a more pleasant product.

The obvious thing the American consumers would say is: Where is the Food and Drug Administration warning? Why won't they tell us the ingredients on that tobacco package? Why won't they tell us if they are dangerous? Because they do not have the legal authority to do it.

From the beginning of time, with the tobacco lobby being one of the most powerful in Washington, they made sure the Food and Drug Administration had no authority when it came to this product. None.

Who does regulate tobacco in the United States? The answer is not anyone; no agency does. The only real regulation has come out of court cases where people who were injured sued the tobacco companies because of things such as misrepresentations—light tobacco, low-tar tobacco, safer cigarettes. People take them to court and say that is misleading and deceptive. They have won cases, and they have had to disclose more information over the years.

Today we are trying to do something that the tobacco companies' lobby has been fighting for decades. We are trying to let the Food and Drug Administration take over the responsibility of making certain that American consumers are at least informed about tobacco products so they know what is in that little package, whether it is dangerous, and they can make a conscious choice about purchasing it.

The second thing we do is to make sure that we keep those tobacco products out of the hands of kids. Why? The math is very simple. Every day about 1,000 Americans die from tobacco-related disease—lung cancer, heart disease—1,000 die. If you were a company selling a product and 1,000 of your consumers are dying every day, you start wondering whether you are going to be in business in a few years. So you have to recruit more consumers of tobacco products.

But tobacco companies have a problem. If people wait until they are older—18, 19, 20 years old—to make a choice about smoking and using tobacco, they will probably say: Are you kidding? No way. It is dangerous and it is stupid and it is expensive. So if you cannot get adults to make up for the 1,000 tobacco users who die each day, where do you go? Kids. You go to children. You try to find ways to lure children into using tobacco products.

The advertising has a lot to do with it, but so does human nature. My wife and I raised three kids. We have seen a lot of kids being raised. I even have vague memories of my youth. The first thing you are attracted to is what your parents say you should not touch. Don't you dare touch that pack of tobacco. Don't you dare smoke a cigarette. Can't wait to try it, right? Get out behind the garage with your cousin, the way I did when I was 10 or 11 years old, to smoke my first cigarette. Man, that shows I am independent, I am grown up, I make up my own mind. Kids will do this. I wish they did not. I wish I had not. But they do it.

I told the story on the floor the other day about when I was a little kid growing up in East St. Louis. My cousin Mike and I went out behind a garage and smoked a cigarette. Lucky for me I didn't like it much. I didn't continue the habit. Unfortunately, my cousin Mike did. He passed away 2 weeks ago—younger than I am—passed away from tobacco-related lung disease. It was an addiction started behind that garage that he could never break the rest of his life. There he was, on oxygen, smoking the night before he died. He just could not quit. It is a terrible addiction.

The tobacco companies know to make up for the thousand who die each day. They need 1,000 new smokers a day. Where do they get them? They get them from our kids. Mr. President, 3,000 to 4,000 kids will try a cigarette in America for the first time today, and about 1,000 of them will decide: I am going to keep doing this. And so the ranks of those who die from tobacco-related disease are filled by children.

This bill says we know that and we have to stop it. So not only do we give the Food and Drug Administration the authority to tell us the ingredients in the package, we give them the authority to police how people sell tobacco products in America.

It is no coincidence that they start peddling these tobacco products with candy flavors, because they know kids enjoy candy and will enjoy candy cigarettes. I am not making this up. Chocolate cigarettes and vanilla and strawberry—all these things they come up with so that kids will be attracted to the product. We put an end to that stuff. And we say to retailers: Get serious. You better put those cigarettes away from kids. You better not sell to them or you are going to face a serious penalty. If we are sincere about protecting our kids, we have to do this.

I have been involved in this fight for a long time. I was attracted to it when I first got elected to Congress and probably because like virtually everyone following this debate, somebody in my family died from a tobacco-related disease. In my case, it was my dad. He was 53 years old, and he died of lung cancer. I was 14 years old. It was devastating to my family, to me. But my story is not unique. Sadly, it is a story that is repeated over and over every single day.

About 20 years ago, I decided as a Member of the House of Representatives that I was going to do something about it. The first thing I did was to tackle the tobacco lobby on one little tiny issue: banning smoking on airplanes. Hard as it may be for younger people to believe, there was a time when we had what we called smoking and nonsmoking sections on airplanes. Can you believe that? We are all sitting in the same metal tube flying across the world or around the country, and we are somehow of a mind that if I sit in row 1 through 18 in the nonsmoking section that I will not be bothered by secondhand smoke; it is only those folks in rows 19 to 36 who are going to be in the smoking section that are in trouble. Crazy idea. It never made sense and caused a lot of problems, health and otherwise.

So 20 years ago, we banned smoking in airplanes. I did it in the House. Senator FRANK LAUTENBERG of New Jersey did it in the Senate. It became the law of the land and eventually all flights became smoke free.

I do not want to take more credit than is due, but I think finally people woke up and said: If secondhand smoke is dangerous on a plane, then it is dangerous on a train or a bus or an office or a school or a hospital. Things changed across America. Now, it is rare to walk into a public gathering place and see people smoking. Folks understand, and they do not do that. You do not expose some innocent person to secondhand smoke. If you want to smoke, if you made that terrible decision that you want to be a smoker, go outside and do it. Don't try to put yourself in a position where you endanger others.

What we are trying to do with this bill is to move this debate forward. It was not enough that we could put warning labels on at one time that now have become so small and irrelevant that people do not even see them. It wasn't enough that we banned it on airplanes. If we are serious about protecting our kids from tobacco and smoking, we have to do more.

This may be an easier issue for me coming from the State of Illinois than Senators from tobacco-producing States or tobacco-manufacturing States. I accept that. This is not easy. For them the issue may be different. It may be in terms of tobacco growers and farmers. It may be in terms of tobacco-related employees. For them the idea of reducing the number of people smoking cigarettes has an economic impact. So I am not going to begrudge them coming to the floor and their attempts to change this bill that is before us. It is perfectly understandable. I do not question their motives at all. But I come to it from a public health viewpoint. I think what they are offering as an alternative is not a good one. Let me tell you why.

We have 1,000 organizations, literally 1,000 organizations, health and consumer organizations across the United

States that have endorsed this bill. I have literally in my time in Congress, 27 years, never seen a bill with this kind of endorsement. People understand this now. They understand we have to do this now. Senator KENNEDY, who is our champion and inspiration, cannot be with us. He is battling a brain tumor and doing well, but he cannot make it to the floor. But I will tell you that he is in our hearts, thoughts, and prayers today. This bill is about his valiant effort to make sure we do this. So many organizations join him and us in saying this is long overdue.

Those on the other side have come up with a substitute, an alternative. There are a lot of problems with it. I have heard the Senators from North Carolina—Senator BURR was just on the floor—talk about their alternative. We took a look at it. It turns out there are some problems with their alternative.

They want to create a new Federal agency. They don't want the Food and Drug Administration to do this. Unfortunately, it will be an untested and underfunded agency. They do not understand the concept behind trying to keep tobacco products out of the hands of kids. They say maybe there are some alternative products these kids could use which would not be as dangerous, the so-called risk reduction idea. We started our bill on the premise that the tobacco industry's practices mislead people and result in terrible health consequences, and they have to be changed.

One of the ways they propose to reduce the risk of tobacco is to change the form of tobacco. Instead of cigarettes inhaled into the lungs, it turns out they believe that spit tobacco, chewing tobacco, is a safer way to use tobacco. The proposal that is being offered by the Senator from North Carolina virtually exempts smokeless tobacco products from regulation. You know what I am talking about, those little pouches you stick in your mouth that let tobacco juices flow, and so forth. We even have some Senators who chew tobacco, if you can believe that—it is a fact—and spit into cups. Not my idea of a good time. But some of them do it anyway.

This bill would not go after that form of tobacco. There is little, if any, evidence that smokeless tobacco products are a step in the way of quitting smoking or becoming healthy.

In fact, many of these new smokeless products are being marketed to smokers as a way to sustain their addictions in places where smoking is no longer allowed. Take a look at this product: Camel Snus, frost-flavored Camel Snus, 15 pouches. See these little pouches over here?

For those who aren't familiar with it, snus is a smoke-free, spit-free tobacco product that comes in little pouches which can be placed under the upper lip. And as one high school student described it: It is easy—says the high school kid—it is super discreet. None of

the teachers will ever know what I am doing.

This is their idea and the alternative? This is the idea, the alternative of the Senator from North Carolina to kids smoking cigarettes. The Web site for Camel Snus boasts that “snus can be enjoyed almost anywhere, regardless of growing smoking bans and restrictions.”

So do we really want a national policy—as the Senator from North Carolina is suggesting—that steers people toward this kind of a product? Let's look at the facts.

Smokeless tobacco is loaded with dangerous ingredients, just like cigarettes. The National Cancer Institute reports that chewing tobacco contains at least 28 known cancer-causing agents. Smokeless tobacco may be a reduced risk in some respects compared to cigarettes, but its use is still a serious health problem and a danger to children. If you need proof of that, look at this poor young man here.

Gruen Von Behrens is an oral cancer survivor. This young man has had more than 40 surgeries to save his life, including one radical surgery that removed half his neck muscles and the lymph nodes and half of his tongue. Like too many teenagers, Von Behrens first tried spit tobacco, which this bill says is a safer way of using tobacco than cigarettes, at age 13—13—in order to fit in. It only took 4 years for him to be diagnosed with squamous cell carcinoma. Look what this poor young man has been through because of a product which the North Carolina Senator tells us is something we should be moving toward in this country.

I think of all those kids who used to have the little can of snuff—baseball players—in the back of their jeans and how cool that was, and I just wonder how many of them face this kind of an outcome because of popular fads. Would we want to endorse that as part of our debate on the future of tobacco in America?

The Burr substitute is based in part on an unproven assumption that smokeless tobacco should be promoted as a way to help people quit smoking. But the 2008 U.S. Public Health Service Clinical Practice Guidelines concluded that the use of smokeless tobacco products is not a safe alternative to smoking, nor is there any evidence to suggest it is effective in helping smokers quit.

Smokers who are trying to quit already have access to safe, rigorously tested, and FDA approved forms of nicotine replacement, like including nicotine gum, the patch, lozenges and other medications.

Let's steer people who want to quit toward these FDA approved products, not toward smokeless tobacco, which is riddled with carcinogens.

Another weakness in my colleague's bill is in the limited authority it gives the new agency to oversee the contents of tobacco products.

The Kennedy bill gives the FDA strong authority to regulate the con-

tent of both existing and new tobacco products, including both cigarettes and smokeless tobacco products.

The Burr substitute gives the new agency virtually no authority over the content of existing smokeless tobacco products—no matter how much nicotine, and no matter how many cancer-causing agents they contain.

My colleague's substitute gives the agency far less authority to remove harmful constituents in cigarettes than the Kennedy bill does, and it makes it far more difficult for the agency to act.

The Kennedy bill allows the FDA to fully remove harmful constituents.

The Burr proposal allows only the reduction—but not the elimination—of known harmful substances.

The Kennedy bill allows the FDA to take into account the impact of product changes on potential users—including children—and the effects on former smokers who might be enticed to resume the nicotine addiction.

The Burr substitute allows the agency to consider only the narrow health impact on existing smokers.

The Kennedy bill allows the FDA to reduce or fully eliminate substances that “may be harmful” using the best available scientific evidence.

The Burr substitute requires the agency to demonstrate that a single product change is likely to result in “measurable and substantial reductions in morbidity.” This standard will be extraordinarily difficult to meet given the large number of harmful substances in cigarettes. It is language that will tie the agency in knots and prevent actions that are clearly in the interests of public health.

The Kennedy bill includes an outright ban on candy and fruit-flavored cigarettes.

The Burr alternative bans only the use of candy and fruit names on the products, while allowing the use of candy and fruit flavors to entice young people to begin using products laced with nicotine and carcinogens.

All these details are important—they mark the difference between an approach that gives the government real authority to regulate the contents of tobacco products, and an approach that bows down to the industry and leaves tobacco companies in charge of these decisions.

We shouldn't continue to give those companies that kind of power.

There is another serious problem with the substitute offered by the Senator from North Carolina. It does not adequately protect consumers from misleading health claims about tobacco products.

The Kennedy bill sets stringent but reasonable scientific standards before manufacturers of cigarettes and smokeless tobacco products are allowed to claim that their products are safer or reduce the risk of disease.

The Burr substitute completely exempts smokeless tobacco products from these standards even if those

claims are likely to cause youth to take up tobacco for the first time.

When smokeless tobacco manufacturers aggressively marketed their products to young people in the 1970s, often with themes suggesting that they were less harmful than cigarettes, use of those products increased among adolescents.

The Burr substitute only allows the agency to look at the impact of health claims on individual users of tobacco products.

It does not allow the agency to consider whether the reduced risk claim would increase the harm to overall public health by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit.

The Senator from North Carolina has criticized the Kennedy bill for limiting tobacco advertising to black-and-white text-only material in publications with significant youth readership.

His substitute, he says, goes further by banning tobacco advertising.

That is an attractive talking point. But like so much tobacco advertising, it is misleading. It has a barbed hook buried in it.

The fact is, a broad, indiscriminate ban on tobacco advertising would likely be struck down by the courts.

The courts would probably rule that it is an impermissibly broad limitation on speech.

They would say the ends are not sufficiently tailored to the means, and they would conclude that it violates the first amendment.

That is what constitutional scholars tell us.

The result of the Senator's amendment would be a continuation of current law—a continuation of the insidious advertising the industry currently uses to lure new customers. Under the guise of a total advertising ban, he would give us the status quo.

And the tobacco industry would thank him for it.

My colleague from North Carolina has improved the warning labels he would require on cigarettes. But they would not be strong enough.

The Burr substitute would allocate 25 percent of the bottom front of the package to a warning label.

In contrast, the Kennedy bill reflects the latest science on warning labels by requiring text and graphic warning labels that cover 50 percent of the front and back of the package.

Clearly, a health warning that takes up the top half of the front and back of a package will be more noticeable and easier to read than one that takes up only a quarter of the bottom of the package—an area that may be hidden by the sales rack.

Senator KENNEDY's bill also gives the FDA the authority to change the warnings in light of emerging science. Under the Burr substitute, the agency would not have any authority to change the warning labels.

And the Burr amendment's required warning labels for smokeless tobacco

products read more like endorsements than warnings.

For example, one of the required statements is a warning that the product has a significantly lower risk of disease than cigarettes. That is not a health warning—it is an unhealthy promotion.

We have an historic opportunity to finally put some real and meaningful regulations in place, and that will stop some of the tobacco industry's most egregious practices.

For decades, this industry has lied to us, and I don't know why we would trust them now to do the right thing.

We should not accept the underlying premise of the Burr substitute, that a lifetime of addiction and a high risk of premature death must be accepted, and that our strategy should be to steer people towards "reduced harm" products.

That is the smokeless tobacco approach, not the public health approach.

The Kennedy bill is a strong and carefully crafted solution that puts the public health first.

The Kennedy bill is the bill that should be enacted.

EXTENSION OF MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that morning business be extended until 12:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mrs. HAGAN). Is there objection?

Hearing no objection, it is so ordered.

Mr. DURBIN. Madam President, I have about 10 minutes remaining, and then I will be glad to yield to the Senator from Kentucky, who has been sitting here. I ask unanimous consent that when I conclude my remarks, the Senator from Kentucky be recognized to speak as in morning business.

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

GUANTANAMO

Mr. DURBIN. Madam President, if you got up early this morning—like about 6 a.m.—and turned on the television, you would have heard a historic speech. President Barack Obama is in Cairo, Egypt, this morning—our time this morning—giving a speech to an assembled group at a university in Cairo about the relationship of the United States and Muslims around the world. It is a critically important speech.

All of us know what happened on 9/11/2001. We know our relationship with people in the Middle East has been strained at best, and we have been troubled by the threats of Islamic extremism, and so the President went and spoke in Cairo. I listened to his speech. Now, I am biased because he was my former colleague from Illinois and I think so highly of him, but I think it was an excellent speech. I think what he tried to do was to ex-

plain to them how we can develop a positive relationship between people of the Islamic faith and America, and I thought he laid out the case very well in terms of our history, our tolerance, the diversity of religious belief in our country, and how some elements of Islam—extremist elements of Islam—are not even operating in a way consistent with their own basic values and principles.

The reason I refer to that speech is that one of the points that was important was when President Obama said to this assembled group—to their applause—that the United States was going to change its policies under his leadership. He said we are not going to use torture in the future, and he received applause from this group. He said we are going to close Guantanamo, and they applauded that as well.

What the President's statement said—and basically the reaction of the audience told us—is that regardless of our image of the United States, for some people around the world there are things that have occurred since 9/11 which have created a tension and a stress between us that need to be addressed honestly. President Obama made it clear that we are starting a new path, a new way to develop friendships and alliances around the world to stop terrorism and stop extremism, and he understands that torture—the torture of prisoners held by the United States—has, unfortunately, created a tension between the United States and other people in the world. They know of it because of Abu Ghraib, the graphic photographs that are emblazoned in our memory, and theirs as well, of the mistreatment of prisoners in Iraq. They know it from the photographs that have emerged and the documentary evidence about the treatment of some prisoners at Guantanamo.

It has, unfortunately, become a fact of life that Guantanamo itself is a symbol that is used by al-Qaida—the terrorist group responsible for 9/11—to recruit new members. They inflame their passions by talking about Guantanamo and the unfair treatment of some prisoners at Guantanamo. President Obama knew this and said in his first Executive order that the United States will not engage in torture and within a year or so we will close the Guantanamo corrections facility. I think it was the right decision—not an easy decision but the right decision. If we are truly going to break with the past and build new strength and alliances to protect the United States, then we have to step up with this kind of leadership.

The President inherited a recession, two wars, and over 240 prisoners in Guantanamo, some of whom have been held for 6 or 7 years. Many of these people are very dangerous individuals who should never, ever be released, at least as long as they are a threat to the safety and security of the United States or a threat to other people. Some should be tried. They can be tried for crimes

and, if convicted, they can be incarcerated. Others may be sent to another country, maybe returned to their own country of origin.

One of these prisoners I happen to know a little about because he is represented by an attorney in Chicago. He is Palestinian. He is from Gaza and was captured when he was 19 years old. He has now been held in prison for 7 years. He is now 26 years old. Last year, our government notified him and his attorney that we have no current charges against him. They have been trying to find a place to send him. He stayed another year in prison while we are trying to determine where he should be sent.

Each of these 240 cases is a challenge to make sure we come to a just conclusion as to each person and never compromise the safety of the United States.

A little over a week ago, the President went to the National Archives and gave a speech about Guantanamo and what we are going to do, and he made it clear that some of these people will be tried in our courts, some of them may end up in prisons in the United States, some of them may end up being held as long as they are enemy combatants and a danger to the United States, and some may be sent to other countries. They are trying to work out 240 different cases. It is not an easy assignment.

The reason I raise this is because it is clear that as long as Guantanamo remains open, it is going to be an irritant to many around the world and lead to the recruitment of more people to engage in terrorism against the United States. Don't accept my conclusion on that. The Chairman of the Joint Chiefs of Staff, ADM Mike Mullen, said:

The concern I've had about Guantanamo in these wars is it has been a symbol, and one which has been a recruiting symbol for those extremists and jihadists who would fight us.

On the floor of the Senate this morning, shortly after the President's speech, the Republican minority leader, Senator MCCONNELL of Kentucky—as he has many times before—came to discuss Guantanamo. He said explicitly—and he may have said this before, but I just want to make it clear that I am reading from the transcript of what he said on the floor this morning—“Like most Americans, I'm for keeping Guantanamo open.” So he clearly disagrees with the President. He wants Guantanamo to stay open. I certainly hope that it doesn't. I don't want this recruiting tool for terrorists to continue.

Senator MCCONNELL has raised the question repeatedly of whether it is safe for us to bring Guantanamo detainees to the United States for a trial or for incarceration. I think it is, based on the fact that we currently have 347 convicted terrorists serving time in American prisons today. Over half of them are international terrorists, and some of them are in my State of Illinois at the Marion Federal peniten-

tiary. They are being held today. As I traveled around southern Illinois last week, I didn't hear one person step up and say: I am worried about the terrorists being held at the Marion prison.

In fact, I went to the Marion prison, met with the corrections officers and guards, and asked them this: What do you think about Guantanamo detainees?

Well, they were somewhere between insulted and angry at the notion that they couldn't safely incarcerate a Guantanamo detainee. One of the guards said to me: Senator, we have more dangerous people than that in this prison. We have serial killers, we have sexual predators, we have terrorists from Colombia, we had John Gotti—the syndicate kingpin. We held these people safely, and we can do it. That is what we do for a living. So don't you worry about putting them in this prison. We can take care of them. We have not had an escape, and we are not going to.

So when Senators come to the floor and suggest that these detainees cannot even be brought to the United States for trial and held in a prison while they are going to trial, that it is somehow unsafe to America, defies logic and experience. If there is one strength we have in this country—and you can debate it—we know how to incarcerate people. We have put more people in prison per capita than any nation on Earth. We hold them safely, certainly in the supermax facilities, and we must continue to. And this idea that we have to keep Guantanamo open because there is not a prison in America where they can be held safely is not true. The 347 convicted terrorists being held in America today are living proof that is not true.

This tactic of opposing the closing of Guantanamo is based on fear—fear that is being pedaled on this Senate floor that these detainees cannot be held safely and securely in the United States. It is the same fear that led people to conclude that our Constitution wasn't strong enough to deal with a war on terrorism, and therefore we had to look for ways to go around it when it came to wiretapping and interrogating prisoners. These are the same people who had fear that our courts in America couldn't handle the cases before them if they dealt with terrorism, though, in fact, they have done that many times over. It is the same fear that our law enforcement authorities can't do their job effectively, when, in fact, they can.

We cannot as a nation be guided by fear. And those politicians who come up and make speeches, whether it is on radio or television or on the floor of Congress, and who try to appeal to the fear of the American people aren't doing us any favor. We are not a strong nation cowering in fear. We are a strong nation of principle, of values, that can stand up to the world and say: We will not in any way harbor or encourage terrorism and extremism. We

are proud of our values. We can stand by them even in the toughest of times. And we are proud of the institutions of America that we have created and that make us strong.

I don't think those who come to this argument out of weakness and fear have a leg to stand on. And when the argument was made on the floor this morning that we should keep Guantanamo open, I would like to think that those who heard President Obama in Cairo, Egypt, and across the Muslim world today and who were encouraged by his aspirations to higher values and a better place for the United States will understand that this statement by one Senator on the floor of the Senate doesn't represent where America needs to go.

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

Mr. DURBIN. I wish to conclude briefly by saying we have a chance to do the right thing, to close Guantanamo in a safe and secure fashion, to put these prisoners in supermax facilities, to stop the use of Guantanamo as a recruitment device for al-Qaida. Turning them loose in countries around the world may mean the release of terrorists and more problems to come.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Madam President, we are in morning business, is that correct?

The PRESIDING OFFICER. The Senator is correct.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BUNNING. Madam President, I have four amendments I wish to discuss to the pending bill. I will not call them up but I wish to discuss them. When the bill is presented on the floor, then I will come back and talk about the specific amendments that are going to be considered in the first tranche of amendments.

First, I rise today in strong opposition to the tobacco regulatory bill on the floor. This sweeping legislation would dramatically increase the FDA's regulatory authority outside the scope of original congressional intent. This is something that Congress did not intend to give the FDA when we wrote the Federal Food, Drug and Cosmetic Act, and that intent was even upheld by the U.S. Supreme Court in 2000. Yet there are still some of my colleagues out here who believe it would be safer for the American public to regulate tobacco under the FDA. They argue that, by doing so, we will help reduce the negative effect of smoking and prevent underage smokers.

As a grandfather of 39 grandchildren, believe me, I want to keep cigarettes out of the hands of kids. But the bill before us today does not do that. It is nothing more than an attempt to eliminate our national tobacco industry. The big problem with this approach is that our Nation's tobacco

farmers are the ones who are going to pay the price.

Not once in this bill did I read any language that would provide any type of protection to our tobacco farmers—not even once. This is why I have introduced the four amendments. Let me give you their numbers: 1236, 1237, 1238, and 1239.

If the FDA is going to regulate tobacco and require sweeping changes within the industry, I want to ensure that farmers have a voice at the negotiating table. My amendments do this. Not only do they allow for fair grower representation, but they help ensure that those who will be most affected by this legislation will not be forced to pay the biggest price.

Let me be clear that I oppose the FDA regulation of tobacco. I have said that as long as tobacco is a legal commodity, it should be regulated through the USDA, the United States Department of Agriculture, not the FDA. If we are going to discuss giving the FDA this authority through this or similar legislation, I want to make sure that we consider the impact on agriculture.

In Kentucky, the family farm is the foundation for who we are as a State. For over a century, the family farm in Kentucky has centered around one crop—tobacco. Tobacco barns and small plots of tobacco dot the Kentucky landscape. We are proud of our heritage and proud that tobacco plays a role in our history. Even after the buy-out, tobacco still plays a prominent role in my State's agricultural landscape.

We have tried to broaden our agricultural base. We have had some success with several types of vegetables, cattle, and even raising catfish. But at the end of the day, nothing brings as much of a return to the small farmer in Kentucky as tobacco. It is big business for small farmers.

With the current economic conditions, more and more farmers in my State are turning to growing tobacco to supplement their income or, in a lot of cases, tobacco is their sole source of income. The money they get from tobacco pays their mortgages, puts their kids through school, and actually allows them to stay on the farm.

Outside of the western part of my State, Kentucky does not have tens of thousands of acres of flat land. We have a lot of green, rolling hills and a climate where tobacco thrives. It can be raised very cheaply on small plots of land that simply cannot accommodate other crops. Whether we like it or not, tobacco remains an economic staple for rural Kentucky. It is profitable and farmers rely on it. That might not be popular today, but it is an economic reality that we have to face.

Whatever the opponents of tobacco say, there is no denying that this bill will add unnecessary mandates and expenses on the farmers in the attempt to punish the big tobacco companies. Sure, this bill will hurt big tobacco companies. They might have to move

offshore. They might have to start exporting more of their products. But they will survive. But Kentucky's tobacco farmers do not have these options available to them. They are the ones who are going to be hurt by this type of legislation.

Some of my colleagues might support this legislation because they wish to outlaw tobacco. The last time I looked, tobacco was still a legal product in this country. If my colleagues want to make it illegal, let them be honest and upfront about it. Let's consider legislation to make it illegal. We can fight that here, out on the floor of the Senate. But let's not keep trying to slip it through the back door, through over-regulation and taxes in the name of preventing underage smoking.

Children should not have cigarettes. They should not. This is why we have age limits and advertising limits. We should do all that we can to keep cigarettes out of the hands of our kids. But the bill before us is not the answer. We can do better and should do better. All this bill does is move the regulation of a legal product from several agencies to another, one that has no jurisdiction to regulate it.

The only people this bill is going to hurt in the end are not the big tobacco companies, but the small and honest farmers who depend on tobacco to pay their bills. This is why I have offered four farmer-friendly amendments to the bill. I want to explain for a few minutes the four.

One, Bunning amendment No. 1236, clarifies that nothing in this bill would prevent our farmers from growing and cultivating tobacco as they have been able to do for the past hundred-plus years.

My second amendment, No. 1237, establishes a grower grant program that would help ease the financial burden of this bill on our farmers.

Amendment No. 1238 gives growers a seat at the negotiating table. The underlying bill establishes a Tobacco Scientific Advisory Committee made up of 12 members. Seven of those members are from the medical field to ensure that public health needs are taken into account. There is one of the public, and three representatives from the tobacco industry. There are two manufacturers and one grower. All members of the committee are voting except for the last three—the tobacco representatives. My amendment is simple. It gives the tobacco representatives the right to vote and adds two more grower positions. That way, all three forms of tobacco—burley, flue cured and dark leaf—are represented at the negotiating table.

The final Bunning amendment, No. 1239, asks the FDA if they are going to impose any new restrictions or requirements on farmers, then they should consider and conduct a feasibility study so that we know the effect on the farm level.

When my amendments come up, I encourage my colleagues to support them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. ALEXANDER. I ask unanimous consent that morning business be extended until 1 p.m.

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

The Senator from Tennessee is recognized.

AUTO STOCK TAXPAYER ACT

Mr. ALEXANDER. Mr. President, today along with Senator BENNETT and Senator MCCONNELL and Senator KYL, I will introduce the Auto Stock for Every Taxpayer Act—to require the Treasury to distribute to individual taxpayers all its stock in the new General Motors and Chrysler within 1 year following the emergence of the new GM from bankruptcy proceedings. This is the best way to get the auto companies out of the hands of Washington bureaucrats and politicians and into the hands of the American people in the marketplace where they belong. So instead of the Treasury owning 60 percent of shares in the new GM and 8 percent of Chrysler, you would own them if you were one of about 120 million individual Americans who paid Federal taxes on April 15.

This is the fastest way to get the stock out of the hands of Washington and back into the hands of the American people who paid for it. To keep it simple, and to help the little guy and girl also have an ownership stake in America's future, Treasury would give each taxpayer an equal number of the available shares.

The Treasury Department has said it wants to sell its auto shares as soon as possible, but Fritz Henderson, president and CEO of General Motors, told Senators and Congressmen in a telephone call on Monday that while it is the Treasury's decision to make, this is a "very large amount" of stock, and that orderly offering of those shares to establish a market may have to be "managed down over a period of years."

Those shares might not be worth very much at first, but put them away and one day they might contribute something toward a college education. For example, General Motors' 610 million shares were only worth 75 cents just before bankruptcy, but they were worth \$40 per share 2 years ago, and \$75 a few years before that.

Already we can see what government ownership of car companies will look

like. Yesterday the presidents of General Motors and Chrysler spent 4 hours in front of congressional committees talking about dealerships.

I assume they drove themselves here from Detroit in their congressionally approved method of transportation, probably their newest hybrid cars.

They did not have much time yesterday to design, build, or sell cars and trucks for their troubled companies. Unless we get the stock out of the hands of Washington, this scene will be repeated over and over again.

There are at least 60 congressional committees and subcommittees authorized to hold hearings on auto companies, and most of them will hold hearings, probably many times.

Car company executives who need to be managing complex enterprises will be reduced to the status of an assistant secretary in a minor department hauling briefings books from subcommittee to subcommittee.

You can imagine what the questions will be and the president of each company will probably be asked these questions: What will the next model look like? What plant should be closed and which one opened? How many cars should have flex fuel? What will the work rules be? What will the salaries be? Where will the conferences be held, and in which cities should they not be held?

Congressmen will want to know why the Chevy Volt is using a battery from a South Korean company when it can be made in one of their congressional districts. There will be a lengthy hearing about the number of holidays allowed, and thousands of written questions demanding written answers under oath.

And it is not just the Congress we have to worry about. The President of the United States has already called the mayor of Detroit to reassure him that the headquarters of General Motors should stay in Detroit, instead of moving to Warren, MI. And the mayor of Detroit has announced his satisfaction with talking with members of the President's auto task force to make sure that the executives of the car companies do not get any ideas about moving their own headquarters.

Then there is the Treasury Secretary—and his Under Secretaries—who will want to keep up with what is happening to the taxpayers' \$50 billion investment in the New General Motors.

There is a very active economic czar in the White House. He will have some questions and opinions as well about how to run the car companies, not to mention the Environmental Protection Agency officials who might be busy deciding what size cars they ought to build.

And, of course, it was not very long ago that this administration let General Motors know that it was making too many SUVs and that its Chevy Volt was going to be too expensive to work. That was the opinion here in Washington. And the President of the

United States himself fired the president of General Motors.

Giving the stock to the taxpayer who paid for it will get the government out of the companies' hair and give the companies a chance to succeed. It will create an investor fan base of 120 million-plus American taxpayers who may be a little more interested now in what the next Chevrolet will be. Think of the fan base of the Green Bay Packers, whose ownership is distributed among the people of Green Bay.

This is the fastest way back to the wise principle: If you can find it in the Yellow Pages, the government probably shouldn't be doing it. More than the money, it is the principle of the thing.

The other day, a visiting European automobile executive said to me with a laugh that he had come to the "new American automotive capital: Washington, DC."

To get our economy moving again, let's get our auto companies out of the hands of Washington and back into the marketplace. Let's put the stock in the hands of 120 million taxpayers, the sooner the better.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Madam President, I gather we are still in morning business.

The PRESIDING OFFICER. The Senator is correct.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. DODD. Madam President, I wish to take a few minutes to speak about the importance of what we are doing to address the issues raised by my friend and colleague from North Carolina, Senator BURR, who has raised some important issues. We are debating, of course, very historic public health legislation. The bill before this body will, for the first time, give the Food and Drug Administration authority to regulate the tobacco industry and to put in place tough protections for families that for too long have been absent, when it comes to how cigarettes are marketed to children.

As I have said, particularly over the last couple days, I don't think we can afford to wait any longer on this issue. As I think all colleagues are aware, every single day we delay action on this legislation, another 3,500 to 4,000 children across the Nation are ensnared by tobacco companies that target them with impunity as they try smoking for the very first time in their lives, 3,500 to 4,000 every single day. Smoking kills more Americans every year than alcohol abuse, AIDS, car accidents, illegal drug use, murders, and

suicides combined. As tragic as all deaths are, particularly ones caused by the circumstances I have raised, if we took all of them together, they do not total the 400,000 people who lose their lives every year as a result of tobacco-related illnesses. Absent action by this Congress, more than 6 million children who are alive today will die from smoking, including the 76,000 or so in my home State of Connecticut.

The Congressional Budget Office has estimated that the bill before us would reduce adult smoking by 900,000 Americans. That is not an insignificant number. It represents about 2 percent. The CBO estimates that over the next 10 years, 2 million children will not take up smoking, if we are able to pass this legislation and have an effect on the marketing of these products to kids. That is 11 percent of children across the country. That is 700,000 people we would be able to have an influence on, convincing them not to take that first cigarette, to begin the habit of smoking.

Unfortunately, flaws in the Burr substitute will not achieve those goals. It would result in much less regulation of tobacco products, allow the tobacco industry to play many more games and hide more of the harm their products cause and leave children and others more vulnerable to the scourge of tobacco. Instead of using the FDA, a proven agency of 100 years, with experience in regulatory, scientific, and health care responsibilities, to carry out the purpose of this bipartisan bill, the Burr substitute creates a flawed agency, with inadequate resources, and limits the authority of that agency to take meaningful action to curtail the harm caused by tobacco products and their marketing.

The Institute of Medicine, which is highly respected by all of us, and the President's cancer panel have both endorsed giving the FDA this critical authority. The Food and Drug Administration has 100 years of experience in regulating almost every product we consume in order to protect public health. A new agency is not the answer. Obviously, one more bureaucracy is hardly the direction we ought to be going. Our bipartisan bill provides adequate funding to effectively regulate tobacco products through a user fee paid by the tobacco industry.

The Burr substitute does not provide adequate resources to get the job done either. In the first 3 years, the Burr substitute provides just a quarter of the funding provided in the Kennedy proposal, which has been with us for the last 7 or 8 years and has been endorsed by 1,000 organizations, faith-based organization, State-based organizations, and virtually every major public health advocacy group in the United States.

Our bipartisan bill gives the FDA strong authority to regulate the content of both existing and new tobacco products, including both cigarettes and smokeless tobacco products. The Burr

substitute gives the new agency no authority whatsoever over the content of smokeless tobacco products, no matter how much nicotine and no matter how many cancer-causing agents are in those products. The National Cancer Institute, the American Cancer Society, the U.S. Surgeon General, and the Public Health Service have all concluded that smokeless tobacco products, as sold in the United States, are a cause of serious disease, including cancer.

This is not a partisan analysis. When the Surgeon General, the National Cancer Institute, the American Cancer Society, as well as the Public Health Service, says these products cause cancer and can kill, that is not an ideological conclusion. That is the scientific opinion of the very agencies and organizations we rely on for this information. They are saying, if one uses those products, they could get cancer and could die. Suggesting we ought to have an agency with no power to regulate those products takes us in exactly the wrong direction, given the growing use of smokeless tobacco products. They should be subject to regulation like other tobacco products. This amendment would allow smokeless tobacco manufacturers to make their products as harmful as they may want with no regard for public health.

The Food and Drug Administration regulates the food our pets consume. Products consumed by dogs and cats are regulated by the FDA. The idea that we would have an agency with the power to regulate not only the food we consume and the cosmetics and all variety of pharmaceuticals and so forth that we ingest, excluding tobacco, that we would also give them the power to regulate products our pets consume, but we wouldn't allow them to regulate smokeless tobacco or cigarettes runs counter to common sense in this day and age. This is the 21st century, and 400,000 people die every year from self-inflicted injury as a result of the use of these products. As well, 3,500 children begin smoking every single day. To say we can't use this Agency, which has the power and ability to regulate, do research, as well as engage in public health, flies in the face of logic. The idea that our pets at home have better protection than our children when it comes to tobacco products makes no sense to anyone I know.

The Burr substitute gives the Agency far less authority to remove harmful constituents in cigarettes than our bipartisan bill does, and it will make it far more difficult for the Agency to act.

I mentioned before I was a smoker. I am grateful that most of my colleagues were not. But having been one, I can tell them, it is hard to quit. People struggle every day to quit, and it is hard. I don't have any polling data, but I would bet that if we asked every parent who smokes—my parents did, my father smoked cigars and pipes; my mother smoked Chesterfields for about

20 years before she died of cardiovascular issues that may have been related to smoking—whether they would like their children to begin smoking or using smokeless tobacco products, I will guarantee that number is off the charts. They don't want their children to start this.

The Presiding Officer comes from a State of 12,000 small tobacco farmers in North Carolina. I haven't said this before, and I should have—and I apologize for not saying it—this is not the fault of the tobacco farmer. They are in business. They grow a crop. I don't know enough about the science of this, but I suspect the leaf itself is not the issue. It is the 15 carcinogens that are included. When we light up a cigarette, it isn't just the tobacco leaf that comes from North Carolina that is rolled into a piece of paper. There are 50 other ingredients, particularly ones designed specifically to create the addiction associated with cigarettes.

The last thing I wish to see is a farmer in North Carolina, whose economic well-being could be adversely affected by a decision we make, be harmed. We can help them. I know we try to do that in this bill, and I will be anxious to hear from my colleague from North Carolina with the adoption of this legislation—not that I expect her to support it—what we can do to help these people. I suspect many of them, if asked the question: Would you like your children to begin smoking, would likely give the same answer. So that farmer out there would need some help, and we ought to provide it.

Our bill allows the Food and Drug Administration to take into account the impact of product changes on potential users, particularly children, and former smokers. The Burr substitute only allows the Agency to consider the narrow health impact on existing smokers. Our bipartisan bill allows the Food and Drug Administration to reduce or fully eliminate substances that may be harmful using the best available scientific evidence. The Burr substitute requires the Agency to demonstrate that a single product change is likely to result in “measurable and substantial reductions in morbidity,” knowing that this standard would be extraordinarily difficult to meet, given the large number of harmful substances in cigarettes.

Our bill bans candy- and fruit-flavored cigarettes. I hope my colleagues don't need me to explain why there are candy- and fruit-flavored cigarettes. That is not to convince a 55-year-old they ought to start smoking. When they decide to make cigarettes taste like candy, tell me who the audience is. If you think it is some adult, then we are living on different planets because that is designed specifically to get the kids. We know 90 percent of adults who smoke began as kids. Those are the statistics. Our bill bans candy- and fruit-flavored cigarettes. The Burr substitute only bans the use of candy and fruit names on products—leaving to-

bacco manufacturers to market cigarettes that taste like mocha mint or strawberry.

The Burr substitute prevents the Agency from requiring the manufacturer to make any product change that the manufacturer elects to implement by requiring changes in how tobacco is cured or might otherwise impact the tobacco leaf. This would always be used by the manufacturers to challenge the product standard. For example, a new study found that the high level of tobacco-specific nitrosamines in tobacco products has probably resulted in twice as many people dying from lung cancer. Under the Burr standard, it is highly unlikely, we are told, that the Agency would take action to address this issue because the simplest solution is to change how some tobacco is cured after it is grown. The Burr substitute allows tobacco companies to continue to deceive consumers in that regard.

The Burr substitute also bases its tar and nicotine standards on the results of a specific test that the Federal Trade Commission recently rejected because it does not provide meaningful information about the health risks of different cigarettes. In its statement discrediting the test, the Federal Trade Commission wrote:

Our action today ensures that tobacco companies may not wrap their misleading tar and nicotine ratings in a cloak of government sponsorship. Simply put, the FTC will not be a smokescreen for the tobacco companies' shameful marketing practices.

That is from the Federal Trade Commission, hardly an ideological or partisan organization. That is their quote on discrediting the test the FTC conducted.

In addition, the National Cancer Institute has determined there is no evidence that reducing tar to a degree even greater than called for in the Burr substitute actually results in a reduction of risk of disease. The Burr substitute makes it likely that Americans will continue to be misled by nicotine and tar figures that appear to have the government stamp of approval, believing that cigarettes with lower tar numbers are safer. The National Cancer Institute is an organization that is highly credible and respected. The Burr substitute does not adequately protect consumers from misleading health claims about tobacco products, a very serious problem. The bipartisan bill sets stringent, but reasonable, scientific standards before manufacturers of cigarettes and smokeless tobacco products are allowed to claim that their products are safer or reduce the risk of disease.

The Burr substitute completely exempts smokeless tobacco products from these standards, no matter how spurious and even if those claims are likely to cause youth to take up tobacco for the first time. Supporters of this proposal argue we should allow and encourage the use of smokeless tobacco because it is less harmful than smoking. But this was refuted in 2003

by Surgeon General Richard Carmona, who was appointed by President Bush, when he addressed a congressional committee.

Let me quote the Surgeon General:

Do not fall for the myth—a very dangerous public health myth—that smokeless tobacco is preferable to smoking.

Again, this is the Surgeon General. Going back several administrations, Surgeons General, Secretaries of Health and Human Services, this is an issue that does not divide people. President Bush's Surgeon General was a fine man, Richard Carmona. I see my friend from Arizona. I believe Richard Carmona is from Arizona. I had an opportunity to meet with him and talk with him in the past, and he did a good job.

I will quote him again:

Do not fall for the myth—a very dangerous public health myth—that smokeless tobacco is preferable to smoking.

He went on to say, and I quote him further:

No matter what you may hear today or read in press reports later, I cannot conclude [as Surgeon General] that the use of any tobacco product is a safer alternative to smoking.

And the 2008 Update of the U.S. Public Health Service Clinical Practice Guidelines regarding tobacco cessation concluded:

[T]he use of smokeless tobacco products is not a safe alternative to smoking, nor is there evidence to suggest that it is effective in helping smokers quit.

Senator BURR's substitute only allows the agency to look at the health impact on individual users of tobacco products. It does not consider whether the reduced risk claim would increase overall public health harms by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit. Senator BURR's and our colleague Senator HAGAN's standard would allow health claims that would increase tobacco use levels and increase the total amount of harm thus caused by tobacco use.

To prevent health claims from being used to increase the number of tobacco users, our bipartisan bill gives the Food and Drug Administration authority over how these products are marketed. Senator BURR's substitute eliminates that authority, putting our youth at greater risk. If you eliminate that authority, then, obviously, you have torn the heart out of what we are trying to achieve.

Senator BURR's substitute fails to give even the new agency it creates the authority to reduce youth access to tobacco products. Unlike our legislation, Senator BURR's substitute does not establish or fund a nationwide program to reduce illegal tobacco product sales to children. In addition, because the Burr substitute allows any retailer to fully escape responsibility for illegal sales if the employer's employees have signed a form saying they were informed that it is illegal to sell to underage youth, no matter how often the

retail outlet is caught doing so, and no matter how strong the evidence that the employer looks the other way, it provides a significantly less effective approach than the one we have in the substitute, the bipartisan substitute that is before us.

The Burr substitute's minimum standards for State youth access laws are also too weak. The youth access standards in Senator BURR's substitute are riddled with loopholes that make them ineffective. For example, a retailer who never enforces the law against illegal sales to youth cannot be fined if the retailer has conducted a training program for its staff, even if it repeatedly looks the other way when illegal sales to youth are made. In addition, the vast majority of States already have laws in place that exceed the minimum standards in Senator BURR's substitute.

At any rate, these are all reasons why I urge my colleagues to reject the Burr substitute. Our bipartisan bill, as I say, has been endorsed—I have been here for some time. I have never heard of a piece of legislation being endorsed by 1,000 organizations: faith-based, State, as well as all the credible national public health or health organizations in the country. That is not reason enough, but understand we voted overwhelmingly in both Chambers, just not in the same Congress, over the last 6 or 7 years on this proposal.

Again, I want to say to my colleagues who come from tobacco-producing States, I understand the impact this kind of bill can have, and, in fact, we hope it has, with the reduction of smoking by all generations and all age groups, but particularly among children. I certainly stand ready and prepared to do what we can to help those farmers and others whose jobs and livelihoods depend on this industry, who, through no fault of their own but through their livelihoods, are engaged in this business. We want to provide that transitional help.

But we cannot stop doing what needs to be done. With 400,000 people a year dying—more deaths due to this self-inflicted disease than AIDS, murders, illegal drugs, suicides, alcohol abuse, automobile accidents—all of those combined—they do not equal the number that tobacco use causes. With 3,000 to 4,000 kids starting every day, I think my colleagues understand this cries out.

We are about to begin a health care debate. Prevention is a major issue. We are all trying to work on ideas to incentivize healthy living styles. What an irony it would be, on the eve of the emerging debate about prevention, that we had an opportunity to make a difference in doing just that, with having 900,000 adults who stopped smoking and 700,000 kids—maybe those are numbers that are not as impressive as we would like them to be—but if we can save 700,000 children's lives and 900,000 adults, to have them stop smoking and not get involved in this habit, what a difference it would make.

I have talked about deaths. There are people who live with this stuff—the emphysema. The cost—even if you are not impressed with the ethics of it, the morality of it, if the numbers is the only thing that drives you, we are spending billions of dollars every year to provide for people who are suffering from smoke-related illnesses.

So on the eve of the great health care debate, what a great way to begin that by saying, at least in this one area, we are going to do something about the children in this country. We are going to do something that is long overdue on the manufacturing and the marketing, as well as in the production of these products. We are going to say to the Food and Drug Administration: Take over here. Take a look at all of this. Provide the regulations and the guidelines. If we can do it for the produce or the foodstuffs we provide for every pet in this country, we ought to be able to do it for the American children.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Arizona is recognized.

NORTH KOREA

Mr. KYL. Mr. President, I rise today to discuss recent events in North Korea. On April 5, the North Koreans tested a long-range Taepo Dong 2 missile, which traveled nearly 2,000 miles before falling into the Pacific Ocean. This test, which the North Koreans described as an attempt to launch a satellite into orbit, represented an improvement in the range of North Korea's missiles. In 2006, the Taepo Dong 2 only traveled 1,000 miles and did not successfully reach a second stage, as the most recent missile did.

U.N. Security Council Resolution 1718 prohibits the country's use of ballistic missile technology, and the United Nations Security Council issued a statement on April 13 condemning the recent launch and calling on member states to implement existing sanctions against North Korea.

In response, North Korea abandoned the six-party talks, promising to reactivate its nuclear program and never to return to the six-party negotiating table.

Less than 2 weeks later, North Korea conducted a nuclear test. Between the Taepo Dong 2 test and the nuclear test, North Korea also launched at least five shorter range missiles. Intelligence reports also indicate another long-range test is in the offing for later this month or early July.

So far, world response to this latest illicit behavior has been one dimensional, with leaders around the globe issuing condemnations of varying strength. President Obama issued a clear condemnation of North Korea's action, stating:

North Korea's ballistic missile programs pose a great threat to the peace and security of the world and I strongly condemn their reckless action.

Secretary Clinton echoed the President's remarks and emphasized, as the President did in his April speech in Prague that—and I am quoting—“there are consequences to such actions.” The question is, it is unclear what consequences the administration has in mind. And Susan Rice, our Ambassador to the United Nations, has been reluctant to commit U.S. support for the inclusion of sanctions in the U.N. resolutions currently being drafted.

Despite North Korea's detonation of a nuclear device and test of long-range missiles designed to threaten us, the relationship between the United States and North Korea has not substantially changed. There are, however, several things that the United States could do to back up its condemnation of North Korea's reckless actions. Thankfully, we have a number of options available to us, and we are not faced with the “shoot first, ask questions later” approach that former Secretary of Defense William Perry advocated in a 2006 Washington Post editorial, when he argued that the United States had no other option than to destroy North Korea's missiles on their launching pads.

First, the United States could return North Korea to the state sponsor of terrorism list. North Korea was removed from this list when it agreed to a series of measures related to the disablement of its plutonium production at the Yongbyon reactor. Now that North Korea has renounced that agreement and restarted its nuclear program, there is no reason it should not return to that list.

President Obama indicated his support for this type of strategy on the campaign trail, saying:

If the North Koreans do not meet their obligations, we should move quickly to reimpose sanctions that have been waived, and consider new restrictions going forward.

Second, the United States could reimpose financial sanctions on high-level North Korean officials and banks affiliated with the North Korean Government. In March 2007, the U.S. Treasury ordered U.S. companies and financial institutions to terminate their relationships with Banco Delta Asia over alleged links between the bank and the Government of North Korea and froze certain funds of high-ranking North Korean officials.

Third, the United States could expand defense and nonproliferation initiatives. President Clinton's Secretary of Defense William Cohen recently argued in the Washington Times for reversing President Obama's deep cuts to missile defense programs. I agree with Secretary Cohen that the President's \$1.4 billion of cuts do not send the right signals to those who seek to threaten us, especially those who tout ballistic missiles as the chief element of their threats.

President Obama, in direct support of U.N. Security Council Resolutions 1695 and 1718, could also expand interdiction and intelligence cooperation under the Proliferation Security Initiative with our new partner, South Korea.

As the President said in Prague:

Rules must be binding. Violations must be punished. Words must mean something.

These commonsense steps would send a clear message to the North Koreans and their partners in proliferation that the United States is serious when it repeatedly refers to consequences and is willing to employ all measures and its full leverage in order to influence North Korea and avoid conflict.

Of course, the United States should work with the international community to enlist its support for increasing pressure on the North Koreans, and the administration has signaled its support for a multilateral approach through its focus on working through the United Nations. But this approach is already limited by North Korea's history of disregarding U.N. action and by continued Russian and Chinese waffling. I am not convinced new U.N. resolutions would be treated any differently by North Korea than the ones it has already ignored. Its record has led some to question whether a regime so willing to wreak famine and destruction on its own people is not beyond the traditional application of “carrot and stick” diplomacy.

Moreover, our effort to work with other nations does not excuse us from the responsibility to act ourselves. If Russia or China will not sanction North Korea, is that any argument that the United States should not? Of course not. We can offer nations attractive terms for their support, such as help in dealing with increased flow of North Korean refugees, trade incentives, or enhanced military-to-military cooperation, such as revoking the misguided Obey amendment and allowing Japan to purchase an export variant of the F-22 fighter. However, if other nations conclude that holding North Korea accountable is not in their interest, then we must not let that prevent us from doing what is best in our interest.

The gravity of events in North Korea is only increased by the similar disagreement between the international community and Iran on the subject of its nuclear program. If strong words are followed by weak and ineffective action toward North Korea, why should Iran expect different treatment? Conversely, if we display resolve and fortitude in confronting a belligerent North Korea that uses nuclear explosions and ballistic missiles as foreign policy tools, we send a powerful message to the rest of the world of our sincere commitment to nonproliferation and regional stability. This is doubly important considering the well-known cooperation between North Korea and Iran on a variety of illicit programs.

While some debate the proper U.S. response, I believe one thing is certain: Past negotiations have not been successful. North Korea has not been an honest negotiator, preferring to use, instead, “missile diplomacy” to spark international panic and extract a concession—typically fuel or grain ship-

ments—from a worried international community. This process, in various permutations, happened in 1993, 1994, 1998, 2006, 2007, and it may repeat itself in 2009.

For those who would not repeat the blunders of the past, North Korea's actions have forced an unwelcome choice on the world: either North Korea is a threat and we must take actions across all fronts to isolate the regime and defend our Nation and our allies against its considerable capabilities or these actions are the benign outbursts of a misunderstood regime.

The President has clearly said that North Korea poses a threat to world peace and security. It is now a question of matching action to rhetoric.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, I ask unanimous consent to be recognized for up to 15 minutes as in morning business.

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

Mr. INHOFE. I thank the Chair.

REMEMBERING TIANANMEN SQUARE

Mr. INHOFE. Mr. President, 20 years ago this week, on June 3 and 4 in 1989, the world watched the Communist Government of China violently crack down on peaceful demonstrators in Tiananmen Square. We all remember that. It is hard for me to believe it has been 20 years ago.

One picture that is forever imprinted on our minds and our memories is that of a lone Chinese student who stood before a line of army tanks following days of violence that had resulted in hundreds killed and thousands more wounded. We never did find out what happened to that young student. I assume he was taken away, tortured, and killed, but we don't know that. He displayed tremendous courage in the face of tyranny and injustice. For weeks, students had raised their voices demanding greater democracy, basic freedoms of speech and assembly, and an end to corruption. While the photo of this student became infamous to the world as a picture of the Chinese people and their desire for true and lasting freedom and democracy, it remained virtually unknown to the people of China due to the Chinese Government's continued censorship and oppression.

On March 25, the Speaker of the House of Representatives, Nancy Pelosi, while on a trip to China, remained silent regarding the ongoing human rights abuses there. Instead, she talked about the government on

global warming and issues such as that. This week in Beijing, U.S. Treasury Secretary Tim Geithner followed the Pelosi model, remaining mute on human rights abuses that are going on today, and spoke only of environmental issues.

In 2005, I gave a series of speeches on the threat China poses to our Nation. Now, 4 years later, we are in a position where they are the largest holder of our national debt, and my concerns regarding China remain the same.

I have spent many years in activity in Africa, primarily Sub-Saharan Africa, and right now we are competing with China for the energy that is there. China is doing a better job than we are. They are competitors of ours not just militarily but economically. It is of great concern to me that as we continue to grow in our relationship and our dependence on China, our U.S. Government officials seem to place more value on the Chinese Government's treatment of the environment than the treatment of their own people and the threat they pose to our Nation.

On the 20th anniversary of the Tiananmen Square massacre, Pelosi and Geithner's omission is a disgrace to the memory of those who stood and many who died as they pleaded with the government to allow them basic freedoms that we as Americans possess and enjoy.

Sadly, ignoring these issues is exactly what the Government of Beijing wants. They would like nothing more than to erase the memory of the Tiananmen Square massacre from our minds and from the minds of all people around the world. The Chinese Government would like us to forget that in June of 1989, they used lethal force of 300,000 troops strong to crush peaceful protestors who were seeking greater freedoms. The Chinese Government would like the image of that courageous man standing before the line of tanks to fade from our memory. However, we can't forget the hundreds who were murdered, the thousands who were injured, and the more than 20,000 people who were arrested and detained without trial due to the suspected involvement in the protests, specifically in Tiananmen Square.

We don't know today where those people are. Most likely, they are still incarcerated someplace or they have been killed. The Communist government is so bent on wanting us to forget these issues that they have shut down blogs, blocking access to individual news sources such as Twitter, and denied access to popular sites such as YouTube.

Since Tiananmen Square, China has continued to increase severe cultural suppression of ethnic minorities such as the Tibetans, the Uighurs; increase persecution of Chinese Christians, the Falun Gong, and other religious groups and other minorities; increase detention and harassment of dissidents and journalists; and has maintained tight controls on freedom of speech and ac-

cess to the Internet. We know journalists who right now are still incarcerated over there, but there is no trace of exactly where they are.

Despite the promises to the contrary, China didn't provide greater access to the international media during the 2008 Olympic Games. Unlike the previous hosts of the past games, the Government in Beijing blocked access to certain Internet sites and media outlets in an attempt to censor free speech.

As China grows economically and continues to exert its influence globally and thus considers itself a significant player on the world stage, I believe China should be held to a standard of political, religious, and ethical responsibility.

Our country was founded by those who were seeking basic freedoms, and we have to stand for those who are doing the same in other countries. When basic freedoms can be practiced, countries thrive and prosper because people are allowed to choose a better way of life for themselves. We must also recognize the danger we place ourselves in by becoming closer and more dependent upon nations that continue to silence their people, deny them access to information and the ability to practice their cultures and beliefs. That is what is happening today.

On the occasion of the 20th anniversary of Tiananmen Square, my colleague Senator BROWN and I have introduced S. Res. 167 to remember the families and the victims who were killed in the June 1989 protest and to call on the Government of China to put an end to its continuing human rights violations. Our country must not remain silent, and many of my fellow colleagues in the Senate who are cosponsors of this resolution agree.

This resolution calls on the Chinese Government to release all prisoners still in captivity as a result of their suspected involvement in Tiananmen Square protests and to release all others who are currently being imprisoned without cause. This resolution puts the Senate on record, encouraging the Chinese Government to allow freedom of speech and to access information, while ending the harassment, intimidation, and imprisonment practices the government has carried out against those who are minorities and who seek religious freedom. We also call on our government to uphold human rights in China. Our silence only dishonors those who lost their lives and freedoms in Tiananmen Square.

We have this resolution right now. So far, we have cosponsors who have just found out about it and called in, including, in addition to Senator BROWN and myself, Senators GRAHAM, LIEBERMAN, KYL, COBURN, VITTER, MENENDEZ, WEBB, and BROWNBACK. I encourage others to join in this message that I believe is a very clear message that should be sent by the United States.

Today—this very day, this moment—there are 150,000 people who are pro-

testing in Hong Kong right now because of the problems we are addressing with this resolution. So I encourage my colleagues to join in this resolution and get this message out loud and clear.

GUANTANAMO BAY

Mr. INHOFE. Mr. President, one of our colleagues from Illinois was talking about their desire to have these detainees from Guantanamo Bay come into the United States for trial. Let me just suggest—I am not a lawyer, but I do know this: I have spent a lot of time down there. I know the situation. I know it is a resource that we have to have, that we have to keep. There is no justification at all for closing Guantanamo Bay. No justification. All we hear is: Well, this came at a time when there was suspected terrorism or torture of prisoners in other areas. But never at Gitmo. There hasn't been a documented case of torture that went on there. This is a resource we need.

My friend from Illinois suggests bringing them to this country. The rules of evidence are different. These are not criminals, these are detainees. The proper place for them to be adjudicated is in the tribunals. The only place available right now is the tribunal that is set up in Gitmo.

If we bring them to this country, under our laws, quite a few of those would actually be released. When they are released, they could be released into society. For those who say we need to use some 17 areas for incarceration in the United States, as opposed to using Gitmo, to incarcerate these people, that would become 17 magnets for terrorist activity in the United States.

We have to get over this thing of everybody lining up and saying we have to close it. Guantanamo Bay is something we need, and we have to have it. There is not a pleasant alternative. It would cause the release of terrorists in the United States. If that is what the Senator from Illinois and the Democrats and the President want, they are going to find that virtually all Americans disagree with them.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

NUCLEAR ENERGY

Mr. VOINOVICH. As my colleagues know, supporting the development and expansion of the nuclear industry is something that has been one of my top priorities since I came to the Senate. I have been working to shape nuclear policy in this country for the past 8 years as chairman or ranking member of the Clean Air and Nuclear Safety Subcommittee. I wish to recognize my colleague, Senator INHOFE, for the leadership he provided before I became chairman of the Nuclear Regulatory Commission committee.

Mr. INHOFE. Mr. President, first, I compliment the Senator from Ohio.

When he was Governor of Ohio, he had the reputation of being the most knowledgeable person on air issues. Of course, the primary concern we had at that time was that we had a crisis in energy, and the one thing that had to be in the mix to resolve that crisis was to do something with nuclear power. There is nobody who has carried that banner more forcefully than the Senator from Ohio. I appreciate our joint efforts to make that happen. I believe we will be successful with the number of applications that are there right now and the progress that has been made.

Mr. VOINOVICH. I thank the Senator.

Mr. President, I take pride in the fact that our committee has helped transform NRC into one of the best and most respected regulatory agencies in the world. We have worked very hard on placing the right people on the Commission and providing the Commission with the resources and tools necessary to do its job and holding them accountable to the results. In fact, we have held more than 20 hearings involving the NRC in the past 8 years. So it is no accident that we have seen a dramatic improvement in both the safety record and the reliability of the 104 operating nuclear reactors today over the past 8 years. Without the public confidence that these plants are safe and secure, there won't be any nuclear renaissance.

We have spent time and effort to make sure the NRC has the resources—particularly the human capital—it needs to make sure that our 104 nuclear plants are operating safely but also to ensure it can process multiple license renewal applications and combined license applications for the new plants coming on board. We wanted to make sure the NRC doesn't become the bottleneck.

In 2005, we introduced three pieces of legislation as part of the 2005 Energy Policy Act to provide flexibility in hiring and employee retention. As a result, the NRC was able to hire over 1,000 highly qualified engineers and scientists over the last 3 years to replace retiring workers and also bring on those new people who are going to be necessary to process the new applications coming in. I am also pleased to note that the Nuclear Regulatory Commission has been rated as the best place to work among Federal agencies for 2 years in a row. They have a great workforce, and they are a top-notch organization.

The good news is that the NRC now has 17 applications for 26 new power reactors under review. All indications are that NRC's review of the applications is progressing on schedule. I haven't heard a complaint from anybody who filed applications. We are expecting that these applications will be approved in late 2010 or in early 2011. Obviously, it is not a done deal, but we have every reason to believe we are on the right track. As a matter of fact, five utility companies today—Southern

in Georgia, SCANA in South Carolina, NRG in Texas, Constellation in Maryland, and Progress in Florida—have signed engineering-procurement-construction contracts and are gearing up for construction pending NRC approval and loan guarantees from the DOE. In other words, we are starting to take off in terms of getting some air under our wings.

Mr. President, I have an opinion piece I wrote in the Nuclear News magazine last year, entitled "Making the Nuclear Renaissance a Reality." This paper outlines the need to expand the use of nuclear energy in the carbon-constrained economy and provides a roadmap to overcome challenges faced by the nuclear industry.

Mr. President, I urge my colleagues to read this. Anybody interested can get it on my Web site, voinovich.senate.gov.

As I watch the climate change debate unfold in this Congress, I rise to raise the same concern I raised last year during the debate on the Lieberman-Warner climate change bill: We cannot get there from here without nuclear.

The Waxman-Markey bill that was reported out of the House Energy and Commerce Committee 2 weeks ago sets the greenhouse gas emission reduction cap at 80 percent by 2050, as did the Lieberman-Warner bill last year, but it continues to ignore the need for much wider use of emission-free nuclear energy in order to make this extremely aggressive goal.

I pointed out then that one of the glaring holes in the Lieberman-Warner bill was its deafening silence on nuclear, while studies conducted by EPA, EIA, and others pointed to an inconvenient truth for some people: More than doubling the number of nuclear plants would be required; that is, bringing online more than 100 new nuclear plants in the next 40 years, in order to meet the emission goals set in that legislation. Around the world, governments are reaching the same conclusion and are turning to nuclear energy as a safe, homegrown, cost-effective, and emission-free solution to increasing energy demand.

This is true in Europe especially, where the nuclear renaissance is in full swing. In France, for example, almost 80 percent of its electricity comes from nuclear power. In fact, France exports a good deal of its nuclear power-generated electricity to its neighboring countries, including Germany. President Sarkozy has announced plans to build five additional plants within the next 5 years, in addition to one currently under construction.

Prime Minister Gordon Brown recently signaled his intent to rebuild nuclear energy in the United Kingdom, saying:

Whether we like it or not, we will not meet the challenges of climate change without the far wider use of nuclear power.

He went on to note that the International Energy Agency estimates that we are going to have to build 32 nuclear

powerplants each year if we are going to halve greenhouse gas emissions by 2050. That is more than 1,300 new reactors.

Italy, Finland, and Switzerland have all announced plans to build new reactors after spending the past 25 years trying to phase out nuclear power. These European countries have come full circle in reembracing nuclear after two decades of trying to solve their energy and environmental challenges with conservation and renewables alone. That is significant.

Unfortunately, many proponents of a cap-and-trade scheme, such as Lieberman-Warner or Waxman-Markey, seem to be stuck on fantasies that we can achieve the emission reduction goals with just conservation, efficiency, and renewables. Even those who believe nuclear has a role to play espouse policies that overwhelmingly favor renewables over nuclear.

A case in point: Nuclear energy was conspicuously missing from the \$787 billion stimulus package, while approximately \$40 billion in various tax credits went to energy efficiency, renewables, and transmission. I am not opposed to that, but why did they ignore nuclear?

So it was particularly discouraging when the Senate version of the legislative language providing an additional \$50 billion in loan guarantee authority in the stimulus bill was stripped from the final package during conference. Who did it? Why? The same thing happened when the Senate version of the budget resolution was passed a few weeks ago. We had it in there. We know we have to increase the Loan Guarantee Program to at least \$50 billion, and it got stripped out again. Instead, the majority added the taxpayer-paid \$60 billion Loan Guarantee Program allocated solely for renewables—wind, solar, and geothermal—and electric transmission systems to support renewable generation.

If you can do a priority in spending big money, let's do the grid. The grid is not what it should be. It has to be improved so that we can use wind and solar and get energy out across this country.

Unfortunately, many of the supporters of green energy never mention that it is unrealistic to rely solely on wind and solar power. This is something that I think needs to be made clear to every person in the United States, particularly our children, who are being taught in school that windmills and solar power are the way to the future in terms of the energy needs of America, and there is something wrong, and coal is bad, nuclear is bad. I hear it constantly from people when I go back to Ohio. Right now, 50 percent of our electricity is generated by coal; 20 percent by nuclear; 19 percent by natural gas; 6 percent by hydro; 3 percent by wind, solar, and geothermal; and 2 percent by oil. Given this current makeup of U.S. energy use, I don't think these folks are leveling with the

American people about the reality of what is possible.

They continually tout the need to increase the renewable energies to solve our dependence on foreign sources of energy. They say we need to double our use of renewables. I tell you this: A doubling of the utilization of renewables will bring us to 6 percent, and it would likely take at least 10 years or more to accomplish. Further, it is unlikely that a doubling in renewables would lead to any significant decrease in the use of oil because oil only produces 2 percent of the electricity in the country today.

Particularly, I think it is incredible that some policymakers, such as the newly appointed Chairman of FERC, suggest we can get our energy needs strictly from renewable sources of energy. Give me a break. At only 3 percent of total U.S. electric generation, it is simply intellectually dishonest to suggest that these renewable sources can replace the 70 percent of the baseload electricity currently generated by coal and nuclear in this country.

Don't get me wrong, I do support expanding the use of renewables such as solar and wind, and we see that industry growing in my State. But to just say that is it and not to look at reality is intellectually dishonest. My point is that, realistically, we are not yet in a position to be able to rely upon them for base-load power generation. This is despite receiving government subsidies.

Here is another little statistic people are not aware of. Most Americans are not aware of the fact that, in 2007, nuclear energy only—this is according to the Energy Information Agency—received a \$1.59-per-megawatt-hour subsidy while wind received \$23.37 and solar received \$24.34 per megawatt hour.

Today, there is a huge energy gap between renewable electricity and the reliable, low-cost electricity we must have. We need to look at the way to get the job done. If we want to generate carbon-free electricity, nuclear needs to be a big part of it—I am not saying the only part, but it has to be a big part.

The 104 nuclear powerplants we have operating today, which is 20 percent of the electricity generated, represent over 70 percent of the Nation's emission-free portfolio. In other words, the 20 percent coming from nuclear represents 70 percent of the emission-free electricity in this country.

That means we are avoiding 700 million tons of carbon dioxide each year because of nuclear—700 million tons.

What does that mean to the ordinary citizen? That means 13 million tons is avoided by wind and solar today. That is compared with 700 million in terms of nuclear power. To put this in perspective, 700 million tons of annual carbon emission that is being avoided by our nuclear plants is more than what Canada collectively emits each year. In other words, nuclear nonemitting into

the air is the equivalent of all of Canada. In terms of something we may better understand, it is the equivalent of 130 million cars each year. That is what nuclear power is doing for us. In effect, it is the equivalent of reducing emissions of 130 million automobiles each year in this country.

Nuclear power is the best source we have available to meet our energy needs while also curbing emissions of greenhouse gases. People are recognizing the importance of nuclear energy because they understand the facts.

Public opinion widely supports utilizing nuclear energy. According to a recent Gallup poll, 59 percent of Americans support it. We are not going to be able to turn around our economy, meet our energy needs, and enact some of the environmental policies being discussed today without expanding the use of nuclear energy.

I look at nuclear as a three-fer. Without it, we will not reach our goal of reducing carbon emissions. Without it, we are not going to be able to provide the baseload electricity we are going to need for our country. And without it, we are not going to be able to rebuild our manufacturing base in this country.

At a time when we are struggling to regain our economic footing, nuclear energy offers thousands of well-paying jobs in all stages of development and production. Each new nuclear plant will require an average of 2,000 workers during construction, with peak employment at 2,500 workers. If the industry were to construct 30 reactors that are currently planned, well over 60,000 workers would be required during construction. And once constructed, each plant will create 600 to 700 jobs to operate and maintain it.

That is not to mention the ripple effect this undertaking would make in other areas of the economy. Aris Candris, CEO of Westinghouse Electric, and Mike Rencheck, president of AREVA, recently told me that about 12,000 jobs will be created for each new nuclear plant if you include the manufacturing jobs.

This means that more than 200,000 manufacturing jobs will be created to supply the needed parts and components for the 30 nuclear reactors that are currently planned.

And that is not counting the jobs associated with export opportunities to Europe, China, and India.

Organized labor understands expanding nuclear power will create a lot of well-paying jobs. In fact, here is what John Sweeney said at a roundtable discussion on nuclear workforce issues I chaired last year:

This isn't a Republican issue. This isn't a Democratic issue. It's an American issue.

I couldn't agree with him more.

I have met with Mark Ayers, Building and Construction Trades national president, a big union. He and his union members are actively supporting construction of new nuclear plants.

They have also partnered with local community colleges and the nuclear industry in training workers. They are already training workers for the renaissance.

I have been working hard to get this message out in the past several years. Ohio and the surrounding Midwestern States have been the backbone of this Nation's nuclear manufacturing base. Ohio's small to medium-size enterprises are poised to lead the Nation's transition back into this market. In fact, hundreds of manufacturing jobs are already in existence in Ohio to support the nuclear industry, and more are to come in light of two announcements that are going to be coming up in the next couple of weeks that Ohioans will be very happy about that again will increase the number of people working in this industry.

I recently gave a speech at the Nuclear Manufacturing Infrastructure Council and had an opportunity to meet with several small manufacturing company executives. Their message was loud and clear: A clear policy statement from the administration and Congress is absolutely critical in acknowledging that nuclear power generation will be a growing part of our Nation's energy mix and investments in programs that will support the nuclear industry's near-term implementation needs are absolutely vital. The No. 1 thing is getting that \$50 billion loan guarantee so we can get more of these people off the ground.

They all see the long-term potential growth in nuclear and they would like to invest in nuclear manufacturing, but they need a clear commitment from the government before they make those investments.

I think what these people are saying is we need Presidential leadership to acknowledge what most of us and the rest of the world already know: We cannot get there from here without nuclear.

I am convinced that nuclear power is the only real alternative we have today to produce enough low-cost, reliable, clean energy to remove harmful pollutants from the air, prevent the harmful effects of global climate change, and keep jobs from going overseas.

The biggest challenge remains the financing, particularly in nonregulated States. The deepening global economic crisis is putting additional pressure on the nuclear industry and on utilities.

As I mentioned, we have applications coming in, but right now DOE currently has 14 nuclear projects, representing a total project cost of \$188 billion and loan guarantee requests of \$122 billion. Basically what I am saying is that unless we can get this \$50 billion loan guarantee taken care of, it is going to bring the progress we have been making to a halt.

A very important point that often gets lost in this discussion is the fact that the loan guarantee program authorized under the Energy Policy Act requires the borrowers to pay all the

required fees, including what is called a subsidy cost and, thus, there is no cost to the government. In other words, if they borrow \$5 billion, they are going to have to come up with close to \$1 billion to secure that loan so if things do not go well on the loan, we have something to turn to.

The subsidy cost is levied on each loan guarantee, similar to a downpayment on a mortgage, in case of a default. Any potential defaults are covered by fees paid by the applicants.

In my hand, I have a copy of a recent MIT study on the future of nuclear power. The authors of this study include former Clinton administration officials John Deutch and Ernest Moniz. The central premise of the MIT study on the future of nuclear power is that in order to reduce greenhouse gas emissions and mitigate global warming, we must reevaluate the role nuclear power has as part of this country's energy future.

I wish to share the conclusions of this report because I believe it fits rather nicely with this speech:

The current assistance program put into place by the 2005 Energy Policy Act has not been effective and needs to be improved. The sober warning is that if more is not done, nuclear power will diminish as a practical and timely option for deployment at a scale that would constitute a material contribution to climate change risk mitigation.

I commend to my colleagues this MIT report on the future of nuclear power.

Another issue that has plagued the nuclear industry for decades is the U.S. Government's failure to meet its commitment to assume responsibility for spent nuclear fuel. First, let's set the record straight. I have talked with many experts and policy people, including Secretary Chu and NRC Chairman Klein. They all assured me—it is important that everyone understands this—that the current spent nuclear that is being stored today in dry casks and pools are safe—are safe—and are secure for at least 100 years. That is very important because folks are saying you cannot go forward with this because we don't know what to do with the waste; we would like to do something more permanent than what we are doing.

But the fact is that with the dry casks we have, we are in good shape for at least 100 years. The lack of a repository at Yucca should not be something that inhibits us from licensing new reactors.

That being said, we must pursue a long-term solution now. If Yucca is not going to materialize, then we owe the American people a viable alternative. The 1982 Nuclear Waste Policy Act established a nuclear waste fund, a fee paid by utilities to create a fund to deal with nuclear waste. Since its beginning, it has collected \$29 billion. So everyone understands this, since that act went into effect, we have collected \$29 billion from ratepayers in this country. Unfortunately, the fund is on

budget and only about \$9 billion was used to deal with waste. The rest of the \$20 billion amounts to little more than an IOU to U.S. ratepayers. Even if the administration decided to proceed with Yucca, we don't have the money to build a repository. We spent the money on other things. We will have to borrow over \$20 billion to replenish the fund.

The Federal courts have ruled in favor of utilities. This is something else of which most people are not aware. And thus far we have paid utilities \$550 million in damages because we have not come up with a permanent repository for nuclear waste. I am sure if we keep going the way we are, it is going to be in the billions.

I recently met with Secretary Chu, and he told me he would convene a blue ribbon panel to study Yucca. Unfortunately, I believe this is just kicking the can down the road for a couple of years. We have been studying this for more than four decades. We need to provide clear direction and certainty on this issue. The time for studying options is over, and the Federal Government must meet its legal obligations and start taking care of the spent fuel problem sooner rather than later.

If the administration is pulling the plug on Yucca without having a viable alternative long-term solution, then I think we owe it to the American people to refund their fees and stop levying fees.

I introduced the U.S. Nuclear Fuel Management Corporation Establishment Act of 2008 in the last Congress, together with Senators Domenici, Murkowski, Alexander, and Dole, to create an independent government corporation to manage the back end of the nuclear fuel cycle. The bill will also take the nuclear waste fund off budget and give it directly to this corporation without the budget/appropriations process. I am planning to reintroduce that bill with Senators Murkowski, Alexander, and Burr, and I hope we can get additional cosponsors on the bill. It is about time we get serious about mapping out a future course for our Nation.

I firmly believe that utilizing nuclear energy as a key part of a mixed bag of energy sources offers us the best opportunity to truly harmonize our energy, the environment, and economic needs.

As I said before, nuclear energy offers thousands of well-paying jobs in all stages of development at a time when we are struggling to regain our economic footing. It is worth repeating—12,000 well-paying jobs will be created with each new nuclear powerplant. That is 360,000 jobs for the 30 nuclear reactors that are currently planned.

The American people get it, manufacturing gets it, the labor unions get it, and the international community—I have been to London, I have been to Paris, I have been to Austria. I have been around. All of them understand. In fact, I was on a climate change panel about a month ago that was sponsored by the German Marshall

Fund when we met in Brussels. I was amazed at the number of people who said: Mr. Senator, we are never going to meet the Kyoto or Copenhagen goals for reducing our emissions without the use of nuclear power.

It is time President Obama and this Congress get it. We have to launch a nuclear renaissance in this country. We just cannot get there from here without nuclear.

Mr. President, I yield the floor.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NELSON of Florida. I ask unanimous consent that the order for the quorum call be rescinded.

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

EXTENSION OF MORNING BUSINESS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that morning business be extended until 2:15 p.m., with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Florida.

THE STIMULUS

Mr. NELSON of Florida. Mr. President, the question that has been posited before the Senate is, What has the stimulus bill done? It has some fancy name—the recovery act—but, in effect, it is known as the stimulus bill. It was an expensive bill. With the country in the economic doldrums that we have been in, it was hoped it was going to get money out there into the economy and provide a kind of electric shock therapy and stimulate the economy to get it moving again; that it would turn the engine of the economy and, therefore, as those dollars in the stimulus bill got injected into the economy and it turned over, it was going to create jobs.

Indeed, the number of jobs that it was expected the stimulus was going to create was something like 2½ million. So the question is, Is it stimulating the economy? Well, a few minutes ago, the CEO of the Shands Health Care Center at the University of Florida was in my office. He told me the story of how the Shands Hospital in Jacksonville—there are a number of these Shands Hospitals; it is a true medical center complex over several cities—was short some \$35 million, and he didn't know what he was going to do and how that was going to affect their operation—possibly the shutdown of major portions of that hospital.

Remember that one part of the stimulus bill is that we were putting out money into Medicaid to help the States, and there were States that had not been doing their part on Medicaid,

which is a joint State operation—generally with a funding formula of about 55 percent Federal, 45 percent State. A lot of the States hadn't been putting their share in, or they had been constricting the eligibility for the poor and the disadvantaged to have access to health care for Medicaid. Well, with the beneficence of the stimulus bill, we put a lot of money back into the States. In Florida's case, it was about \$4.5 billion, just for Medicaid. It went from a funding formula—in Florida's case—of 55 to 45 for the 2-year period of the stimulus, to a funding formula of 67 percent Federal, 33 percent State. That has allowed him to stop the major abrupt halt of that hospital in Jacksonville, FL.

Let me give another example. The big county hospital in Miami—Jackson Memorial Hospital—is a similar case of about a \$45 million whack that was going to occur because of the State of Florida constricting its Medicaid funding. The stimulus bill for Florida allowed that additional money to flow and, therefore, that hospital will not have its services terminated for a good part of the medically needy as well as the disabled.

Another example: In my State, the U.S. Army Corps of Engineers has awarded over \$100 million in stimulus funds to jump-start crucial Everglades restoration projects, such as the Picayune Strand and the Site 1 Reservoir construction. When you combine that with an additional \$140 million in stimulus money for other projects such as water quality improvements down in the Florida Keys, then the spending in Florida is going to create about 2,000 direct jobs and 5,000 indirect jobs. Overall, the stimulus bill is going to create over 200,000 jobs in the State of Florida.

Another example: Seminole County School District. Seminole County is to the north of Orlando. It is a major bedroom community for the metro Orlando area. Well, they had a plan to eliminate 139 teachers. Because of the stimulus bill, they reversed that plan.

Clay County, to the south of Jacksonville, in northeast Florida—another bedroom community for the metro Jacksonville area. It will bring back 26 elementary school teachers who had been laid off.

Another example: I am just taking a few examples. Miami, Dade County. It has one of the largest highway improvement projects in our State—the Palmetto Expressway. It has been under construction continuously since 1994 because of the mass of people who utilize that arterial roadway. Now they are going to be able to complete that and put hundreds of people to work.

Another example: Northeast Florida. The military complex in Jacksonville—the Jacksonville Naval Hospital and Kings Bay and Mayport Naval Station. The \$40 million of stimulus funding is going to be spent over the next several years for improvements for those hospitals and at the air station and at the

Kings Bay submarine base, which means architecture, construction, and engineering jobs on top of expanded hospital facilities and energy efficient upgrades.

Another example: St. Johns County, St. Augustine, FL—the oldest continuous settlement in the United States—1565. We are going to celebrate the 450 year anniversary. We have 42 years on the English settlement in Jamestown, VA. Not 1607, Jamestown; but 1565, St. Augustine. Well, their school system was going to cut teacher and staff salaries and force them to take unpaid days. Now they are going to get an infusion of an additional \$9 million this year and another \$9 million next year so these cuts won't occur.

Going over to the West Coast of Florida—Tampa. The Tampa International Airport. It is going to create 250 new jobs using \$8 million from the stimulus bill to go out there and improve a taxiway on one of the major runways. This is a job that would not have been done had it not been for this bill.

I will give one final example. Go back to north Florida. We have a huge forestry industry in Florida. But as we have seen, Mother Nature has not been kind in bringing us droughts. When a drought occurs, the forest becomes a tinderbox. When a match is struck or a lightning bolt strikes, the forest erupts into an enormous fire that becomes a contagion that can rage out of control and impinge on urbanized areas. Well, the Florida Department of Forestry is putting contractors to work on fire mitigation projects in high-risk communities using a \$900 stimulus grant.

It is helping in my State, and I suspect it is helping in all the other 49 States that are represented on the floor of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. BURR. Mr. President, I ask unanimous consent that the Senate be in a period of morning business with Senators permitted to speak for 10 minutes.

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

Mr. BURR. I ask unanimous consent to be recognized for 30 minutes.

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, we are desperately working to try to make sure

we can move to amendments on H.R. 1256, a bill that attempts to consolidate the regulatory responsibility for tobacco products under the FDA.

This is being sold as a public health bill. I have been now to the floor for over 3.5 hours in the balance of this week suggesting it does not meet that threshold and that, at some point today, I would have the opportunity, along with Senator HAGAN, my colleague, to give, in some detail, what is in the substitute amendment.

I am going to attempt to do that now, even though we have not moved to the consideration of the other pending amendments. But let me start with a chart I had used earlier today. The reason I make the claim that this is not a public health bill is from this chart that shows the continuum of risk of tobacco products.

It starts on my right, your left, with nonfiltered cigarettes. The baseline we use is that is 100 percent risky. The industry, at some point, probably before I was born, all of a sudden created a filter that went on the end of an unfiltered cigarette.

Because of that filter, it eliminated, it removed some of the constituencies of the combustion of tobacco. That made it 10 percent less risky. The risk went from 100 to 90 percent. Then in the 1990s we had a new product that was never marketed except in test markets. It was a tobacco-heating cigarette, where it did not actually burn the tobacco, it heated the tobacco. It extracted the nicotine, delivered the nicotine in the system but never produced smoke.

That product was considered to be about 45 percent risky but, clearly, a reduction at the time of 45 percent. All of a sudden, in the past 12 months, 18 months, we have seen a new product called an electronic cigarette. Again, no tobacco is burned. It is a fairly expensive product, it is popular outside the United States, not as popular or readily available in the United States. But that electronic product that has a cartridge you replace actually brought the risk level down to about 18 percent. Some might be catching on. As we have introduced new products, we have brought the risk down, the health risk, the risk of disease, of death.

Now we are over here to U.S. smokeless tobacco, a product that most Americans understand. It is not the old snuff our parents and grandparents grew up with, it is ground tobacco. All of a sudden, we realize we reduced even further the health risk. It is now down at the 10-percent risk level, 90 percent below where we started decades ago with an unfiltered cigarette.

Now introduced in the marketplace in the past year is something I referred to as Swedish smokeless snus, it is now on the market. It is sold, it is pasteurized, it is spitless. It was not something the United States or U.S. tobacco companies created, it is something the Swedes created.

Part of what I will get into is how the Swedes have used this product and

other innovative products, other new products, in the marketplace to move smokers from very risky products to less risky products. In the case of Swedish snus, you see a risk level of about 2, maybe 3 percent.

Then we get over to a product that has yet to hit the market except for test markets, the one I covered in great detail several hours ago on the floor, a dissolvable tobacco product, one that was covered by CNN as a candy, one that still meets the age requirements and proof of ID for somebody to purchase.

But to magnify CNN's report, they actually took that product from behind the counter and put it in the candy section next to Reese's cups and gum and had an underage person come up and take one as CNN filmed to make it even more appealing from a standpoint of a story.

But this is the product. This is the product some have come to the floor of the Senate and said looks like a cell phone. I am not sure. It does not look like my cell phone. Maybe it looks like someone's cell phone but not mine. It is not a product that is accessible for anybody who does not produce an ID and does not meet the minimum age requirements of that State.

Risk? About 1 or 2 percent. We are actually getting better with every product that is innovative: therapies, gums, patches, lozenges, pharmaceuticals, negligible, if any, risk.

Let me explain why I started with this because the base bill that is being considered, 1256, takes these categories right here, nonfiltered cigarettes and filtered cigarettes, it locks them in forever. The legislation says to the FDA: You cannot change these categories unless you find some specific thing that would cause you to alter it. It forbids the FDA.

Even though H.R. 1256 creates a pathway to less-harmful products, it is a pathway that cannot be met because one of the conditions of new products entering the market is, you have to prove that people who don't use tobacco products will not be enticed to use these products. It also says you can't communicate with anybody in the public unless you have a product that is approved.

I ask: How do you meet the threshold of proving that somebody who doesn't use tobacco products is not going to use this product, if you can't communicate with them until you get the product approved by the FDA? I have come to the conclusion, since nobody who is a cosponsor or author of the bill has come up with an answer, it can't be done.

To claim that this is a public health bill, one would have to make a reasonable claim that these products are going to be available and maybe potentially more products in the future. But what H.R. 1256 does is, it cuts off availability of product right here. It says, on this side of the line, we have constructed a pathway that nothing will

pass. I don't believe you can make a genuine claim that this is a public health bill when you have locked every user into the 90- or 100-percent category of risk.

Senator HAGAN and I have offered a substitute amendment. That amendment will be voted on about 4:30 today, if things go according to schedule. It is absolutely essential that Senators listen to their staffs who have read the bill, read the substitute amendment, listened to the debate. I know there are a lot of things that go on during the day. It doesn't allow Members to sit down and listen to what RICHARD BURR is going to say. Hopefully, staff has looked at the statistics I have presented, the facts I have brought to the table, the claims I have made, and understands I am right. H.R. 1256 is not a public health bill.

The substitute does allow this to happen. We allow it to happen because the substitute doesn't concentrate regulation in the Food and Drug Administration, an agency that, by their mission statement, is required to prove safety and efficacy of all products they regulate. Pharmaceuticals, biologics, medical devices, food safety, cosmetics, products that emit radiation—that is the world of the FDA. They regulate 25 cents of every dollar of the U.S. economy. They are the gold standard for every American. When they get a prescription and go home to take it, they never wonder whether it is safe or whether it will work because the gold standard in the world is the Food and Drug Administration. When they go to a doctor's office and they get ready to use a device, they don't question whether it was something the doctor made in the back room. They know that device was approved by the FDA. Up until recently, they had every assurance when they bought food that that food was not contaminated, that it wouldn't hurt them or kill them. But as we know over the past several years, we have had things that have slipped through, and Americans have died. The FDA is struggling today to make sure that, in fact, they meet the demands of the regulation they have in place.

What I am saying is, don't concentrate this regulation at the FDA. Don't jeopardize the gold standard. Employees work there with a complete understanding that if it doesn't pass safety and efficacy, it does not receive approval of the FDA.

Let me say it as I said it a couple hours ago. Tobacco products are not safe. Tobacco products cause disease and death. There is no way the Food and Drug Administration, on their current mission statement, can regulate a product they can't prove safe and effective. If you try to put a square peg in a round hole, you will have reviewers at the FDA who say: The gold standard is no longer important because Congress has legislated that it is important. If I turn my head on tobacco products, I can turn my head on this medical device because it doesn't look

like it is going to be dangerous. All of a sudden, something is going to slip through, a pharmaceutical product that kills somebody, a device that does somebody damage, because we lowered our guard. We lowered the threshold that every product must meet to get FDA approval.

I am not advocating for the Federal Government to sit back and do nothing with respect to tobacco. I am advocating that we craft a bill that will achieve the real goals of what Federal regulation should accomplish: To reduce death and disease associated with tobacco and to reduce youth usage of tobacco products. That is exactly what our substitute amendment does. It is designed to keep kids from smoking. But you can't keep kids from smoking if you are not willing to limit advertising.

In the base bill, H.R. 1256, they limit print advertising to black and white. In the substitute amendment, we eliminate print advertising. Let me say that again. In the current base bill, they restrict print advertising to black and white only. In the substitute amendment, we eliminate the ability for print advertising. The substitute amendment is actually tougher on advertising than the base bill.

Specifically, the Burr-Hagan amendment bans outdoor advertising, youth-organized sponsorships, usage of cartoon characters, sponsorship of events that youth attend, and many other provisions, all designed to limit children's exposure to tobacco advertising.

Our amendment does not stop at print advertising. The amendment codifies the other youth marketing restrictions contained in the Master Settlement Agreement of 1998 and makes it a crime for underage youth to possess tobacco products. Let me say that again. In 1998, all the tobacco companies got together, responding to State concerns that health care costs were out of control and that tobacco contributed to it. They provided \$280 billion to all 50 States for two things: Cost share of their health care and so they could create cessation programs to get people to quit.

I covered in great detail over the last couple days that even with this money available, one State only spent 3.7 percent, not of their total money, of the amount of money CDC said was an adequate number to spend on cessation programs. No State hit 100 percent. There are some that deserve gold medals for the fact that they were higher than others.

I pointed out one yesterday. I will point it out again. The State of Ohio is a large State. Of the amount CDC recommended Ohio should take of the tobacco money and devote to cessation programs, Ohio spent 4.9 percent. When you hear these numbers, no wonder we are not doing better at moving people off cigarettes to other products or getting them to quit altogether. It is because the effort we have made through education has been pitiful. As a matter

of fact, 21.6 percent of the youth in Ohio have a prevalence to smoke; 45 percent have a prevalence to alcohol; 17.7 percent have a prevalence to smoke marijuana. Yet some come to the floor and claim that if we give this to the FDA, youth smoking, youth usage will go away. If that claim were even partially correct, the marijuana usage would be zero because it is illegal. There is no age limit.

Some will claim we don't address labeling. We address labeling on packages of cigarettes to discourage children from even looking at them. We require warning labels on the front and the back. We require graphic warning labels that show gruesome and tragic cases of mouth cancer, lung cancer, and other pictures designed to deter children from smoking. As my colleagues can see, keeping kids from tobacco advertising is a key component to the Burr-Hagan substitute amendment. Compare that with the underlying bill, and they will not see the same commitment to limit advertising that children see. The underlying bill contains graphic warning labels but doesn't limit print advertising. Tobacco companies would still be able to advertise in magazines such as *People*, *U.S. Weekly*, and *Glamour*—clearly, purchased by their parents but accessed by their kids, and they can then see the black-and-white ads.

Maybe in some weird way the authors of this bill thought children can't read black and white, that they can only read color. That is why they chose to limit it just to black-and-white advertising.

The only stipulation is, the ads would be in black and white. We can do better. We can absolutely do better than this. Keeping children from using tobacco products must be the first accomplishment of Federal regulation. The Burr-Hagan amendment accomplishes that goal with a two-pronged attack. First, our amendment encourages States to use more of their MSA payments on cessation, putting billions of dollars into the effort. In the last 10 years, States have used just 3.2 percent of their total tobacco-generated money for tobacco prevention and cessation. In 2009, no State is funding tobacco prevention programs at CDC-recommended levels. Our amendment would change this by requiring States to comply with the CDC-recommended spending levels on cessation programs. It would no longer be voluntary.

In the case of Ohio, instead of spending 4.9 percent, Ohio would be obligated by law, if we pass the substitute amendment, to spend 100 percent of what the CDC said needed to be spent for us to successfully make sure our Nation's children were given the message that the use of tobacco products is not an advantageous thing.

Studies show that when States commit the money to cessation, youth smoking and smoking in general declines. Unfortunately, the underlying bill, H.R. 1256, contains no cessation

program. Even though the bill requires the manufacturers to pay up to \$700 million a year, it contains no cessation program. How can you call this a public health bill? How can we suggest this is going to reduce the risk of death or disease? How can we make the claim we are going to reduce youth usage, when there is no commitment, no requirement to cessation?

Secondly, our amendment assists current smokers who are unable and unwilling to quit by acknowledging a continuum of risk of tobacco products, what I showed here. More specifically, our amendment does not preclude reduced exposure products from entering the marketplace. The piece over here, they lock this in. We try to pull all the 100 percent, 90 percent over here to less harmful products because the objective in this bill should be to reduce death and disease.

There is a great debate underway in the academic world on tobacco controls. Some advocate abolishment of tobacco. Straight abolishment is hard to achieve and can bring many unintended consequences such as elicit trade, and we all know that. Since abolishment is not an effective solution at this point, the question remains: How do we lower death and disease rates associated with smoking? Nicotine therapy has proven to be a failure. NIH states that patches and lozenges and other things have a 95-percent failure rate. They fail because smokers don't physically use these products as they do cigarettes. They are marketed poorly and are not designed to be a long-term solution. Under H.R. 1256, the base bill, that trend continues.

Also, H.R. 1256 does not give manufacturers of nicotine products the regulatory framework needed to market and enhance smoking replacement products appropriately. Since we have scratched current nicotine therapy products and abolishment as an effective means to stop smoking, that leaves us with very few options. The most promising option the Federal Government can help perpetuate to reduce death and disease associated with smoking is low-nitrosamine smokeless tobacco products.

Until recently, the academic community resisted the fact that smokeless products could aid in tobacco harm reduction. Skeptics, many of whom helped write the underlying bill, stated that smokeless tobacco products are gateway products that will lead to more children smoking.

Experience and data shows differently. Over the last 20 years, Sweden has allowed tobacco manufacturers to promote low-nitrosamine snus, a smokeless tobacco product, as an alternative to smoking.

This quote is from the Royal College of Physicians dated 2007:

In Sweden, the available low-harm smokeless products have been shown to be an acceptable substitute for cigarettes to many smokers, while "gateway" progression from

smokeless to smoking is relatively uncommon.

You get where I am going. The data is out there. I never dreamed we would use Sweden as an example of where the United States would go. But when the focus is on how you reduce the risk of disease and death, they never lost focus of what that was. They were not clouded as to the introduction of new tobacco products in a blinded effort to lock in what existed. They experimented and found new products that would actually entice smokers to switch.

The claim that in some way, shape, or form these products are gateway products, that they will take non-smokers and turn them into smokers—for the Royal College of Physicians, in 2007: "relatively uncommon."

No statistic is perfect, and I am sure there are some who might have made a decision to use one of these products. But as you saw on the chart before, had they decided to use it, the risk of that Swedish snus was not 100 percent, it was 3 percent. There was no risk of heart disease, COPD, lung cancer, the things that one might get from these products, as shown on the chart over here, that the base bill H.R. 1256 locks in.

As a matter of fact, let me bring this other chart up: Harm Reduction: Smokers, Quitters, Switchers. The question we have to ask is, do we want people to be smokers? Do we want them to be quitters? Or do we want them to be switchers? Because this graph clearly shows you that there is a reduction—quite dramatic—in the relative risk for quitters and switchers in relation to smokers. What every Member will have to ask themselves, as they get ready to decide what they are going to do on this legislation, is: Do we want the American people to be smokers? Do we want them to be quitters? Or do we want them to be switchers?

If the answer is, you want them to be quitters or switchers, then it is very easy. Support the Burr-Hagan substitute. Because the base bill, H.R. 1256, does not create any effort to have quitters or switchers. All it does is lock in smokers. And if the bill's intent is to reduce the risk of death and disease, common sense tells you, without creating quitters and switchers we are not going to do a very good job of reducing the risk of death and disease.

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

The PRESIDING OFFICER. The Senator has 4 minutes remaining of the 30 minutes granted.

Mr. BURR. I thank the Presiding Officer.

Mr. President, you see the chart behind me. The Lancet supports the goal of harm reduction. I will be honest with you, I do not know what the Lancet is. But I have been told it is a very reputable health publication. But let me quote it:

We believe the absence of effective harm reduction strategies for smokers is perverse,

unjust, and acts against the rights and best interests of smokers and the public health.

A reputable health publication that basically says: The absence of effective harm reduction strategies acts against the rights of smokers and public health. But the base bill, H.R. 1256, has no effective harm reduction strategy, no pathway to harm reduction products. But they claim it is a public health bill. A health care publication says that cannot happen. It is "perverse." It is "unjust." Well, they said it. I did not. But I think what they mean is, that to consider passing H.R. 1256, with the knowledge that has been given, would be perverse, unjust.

I am not going to have an opportunity to talk fully at this time because I have a colleague who will take the floor. But let me say, I talked earlier about Camel Orbs and the way CNN portrayed this product as candy and staged a news event—well, "news" would be—let's say "entertainment" event by taking this from behind the counter in a convenience store and putting it in the candy section and having a kid go up and pick the Orbs up out of the rack to say that it was candy.

Orbs represents a 99-percent reduction in death and disease associated with tobacco use compared to cigarettes.

I ask my colleagues, if the objective of Federal legislation is to reduce the risk of death and disease—with nonfiltered cigarettes, it is 100 percent; with filtered cigarettes, it is 90 percent; and with Orbs, it is 1 percent—isn't it perverse and unjust not to allow the American consumer to have this product to switch from cigarettes? I think the answer to the question has already been answered.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Ohio.

Mr. BROWN. Thank you, Mr. Presiding.

I ask unanimous consent to address the Senate for up to 10 minutes.

The PRESIDING OFFICER. Is this objection?

Without objection, it is so ordered.

Mr. BROWN. Thank you, Mr. President.

20TH ANNIVERSARY OF THE TIANANMEN CRACKDOWN

Mr. BROWN. Mr. President, 1989 was a seminal year in world history. Late in the year, on November 9, the Berlin Wall fell. And like dominoes, Poland, Hungary, Czechoslovakia, and Bulgaria went from being Soviet satellites to nascent democracies.

The revolutions of 1989 would set the tone for the quick and peaceful breakup of the Soviet Union. The winds of change were bringing democracy and freedom to the oppressed. I look forward to honoring the peaceful revolutions of 1989 later this year.

But I want to speak today about the revolution that never was, an event

that took place 20 years ago this week, in a country where people remain subject to totalitarianism and tyranny—a peaceful prodemocracy rally that was snuffed out with a brutality the world had not seen since the invasion of Czechoslovakia by the USSR in 1968.

It started much like the revolutions of 1989. Hu Yaobang, the Sixth General Secretary of the Communist Party of China, was famous for supporting ideas like political reform and capitalism—not much different from Lech Walesa of Poland or Vaclav Havel of Czechoslovakia.

When he died on April 15, 1989, thousands of Chinese students began a peaceful protest in Tiananmen Square in his honor and to call for support of his views. Protestors continued to assemble for weeks, calling for nothing more than a dialog with their government and party leaders on how to combat corruption and how to accelerate economic and political reforms such as freedom of expression and democracy.

More than a million people would eventually gather in Tiananmen Square in the shadow of the Forbidden City and the monument in front of Chairman Mao's mausoleum. That 1 million people who congregated were just in Beijing. Protests had spread across the vast expanse of China, in city after city and community after community.

On the night of June 3, 1989, 15,000 soldiers with armored tanks stormed Tiananmen Square to put down the protests.

On June 4, the Chinese Red Army fired upon the protestors and those in the surrounding areas.

On June 5, as the crackdown continued, more than 300,000—300,000—Chinese troops amassed in and around Tiananmen Square.

There, the world witnessed one of the pivotal moments of the 20th century—20 years ago this week—when an unknown protestor stood in front of a column of Chinese Army tanks. He stood alone. Surely he wanted the tanks to stop. Just as surely, he wanted to stop the violent crackdown. He has become an enduring symbol of freedom and democracy in this country and around the world—but not in China, where the image and accounts of the heroic act are banned, attempts to erase it from history.

The identity and fate of this young man are not known. However, it is generally agreed that he died in a Chinese prison for his brave act of nonviolence.

The Chinese Government continues to deny Western estimates of 300 dead and 20,000 arrests and detentions during the Tiananmen crackdown.

The United States responded to the crackdown by suspending all government and commercial military sales and all high-level government-to-government exchanges.

We cannot go back and change the past. But we can begin to hold China accountable for its actions. Not only does China continue to hold people in

jail based on their actions at the Tiananmen protest, but the fear from the crackdown continues to remind Chinese citizens of what they may face should they try again to bring freedom and political reform to their nation.

Today, in Beijing, police are on the streets in and around Tiananmen Square to preempt—not to control but to preempt—any observance of the anniversary.

In Hong Kong, 150,000 people showed up for a candlelight vigil in remembrance of those who died 20 years ago this week.

The government has shut down much of the Internet, including Western news sources, for fear that its citizens may learn what really happened. The police are using umbrellas to block cameras. It is a spectacle and it is a travesty.

For too long, the West has looked the other way as China declares a war on human rights.

For too long, the West has rewarded China with lopsided trade policies while China continues to carry out a war on minority cultures.

The United States should not endorse in any way the brutal and horrific policies of the Chinese Government. Instead, we reward them. Our trade deficit with China in the first 3 months of this year was more than \$50 billion. Last year, it was a quarter trillion dollars.

China manipulates its currency. Most economists agree that the Chinese yuan is 30 to 40 percent undervalued. That manipulation is a pure and simple subsidy—a coerced and false price reduction—on everything it produces. It puts our manufacturers at a disadvantage, but there is so much money to be made by U.S. investors that investors and large corporate interests and our government simply look the other way.

China profits from its abysmal human rights record. It profits from its nearly nonexistent environmental standards. But American investors, the American Government, American business, look the other way.

China refuses to enforce its labor laws. But there is money to be made. So American investors, American corporations, and the American government look the other way. China benefits from its human rights abuses, but again, American investors, American corporations, and the American Government look the other way.

Even before this current recession, the U.S. manufacturing sector has been in crisis. Forty thousand American factories have closed in the past decade. Since 2000, the United States has lost more than 4 million manufacturing jobs, many in the Presiding Officer's home State of Colorado, and 200,000 manufacturing jobs in Ohio.

A 2008 study by the Economic Policy Institute found the United States has lost more than 2.3 million jobs since 2001 as a direct result of the U.S. trade deficit with China. We shouldn't let China profit from suppression.

It is not just the Chinese who are pushing for the status quo. Investors

who profit from their investments in China—American investors, American companies—actively support a regime that is trying to become a global competitor with our Nation. Multinational corporations know no boundaries. Too often these companies leave their moral compass at home.

The United States and all democratic governments should stand up to, rather than apologize for, China's brutal regime. If China seeks to become a responsible member of the international community, its actions should match its aspirations.

Since the Tiananmen Square protest and crackdown, China has continued to deny its people basic freedoms of speech and religion and assembly. It has increased severe cultural and religious suppression of ethnic minorities such as the Tibetans, the Taiwanese, and the Uighurs in western Muslim parts of China. It has increased persecution of Chinese Christians. It has increased detention and harassment of dissidents and journalists and has maintained tight controls on freedom of speech and the Internet.

Earlier today I had the pleasure of meeting again with someone I worked with 10 years ago, Wei Jingsheng. Wei Jingsheng, who is about 60 now, has been called the "father of Chinese democracy." He spent 18 years in prison. He was an electrician at the Beijing Zoo. He spent 18 years in prison for the cause of freedom and democracy in his home country. He was jailed because the Chinese Government accused him of conspiring against it by writing about democracy. Since his release from prison for the second time, Wei Jingsheng this time was exiled to Canada. He has been a force for democratic change for his nation, founding the Overseas Chinese Democracy Coalition and the Wei Jingsheng Foundation. He has been nominated for the Nobel Peace Prize seven different times. He lives in Washington, the capital of our democracy, but he continues to fight for democracy in his home country.

The Chinese people, like Americans, are trying to live meaningful, peaceful lives and create a better world for their children. Unfortunately, they are held hostage by a brutal, one-party Communist totalitarian regime. This regime benefits from many of our country's policies, from lax trade enforcement to our lax response in the face of blatant human rights abuses. The United States, by its acquiescence, has helped to prop up the Chinese Communist party. The partner in working to prop up the Chinese Communist party is large U.S. corporations.

Wei Jingsheng told me, as we walked the halls of the House of Representatives in 1999 during the discussion and debate on the permanent normal trade relations with China, he looked me in the eye and he said the vanguard of the Communist party revolution in the United States—the vanguard of the Chinese Communist party in the United States of America—is American

CEOs. It was the American CEOs who walked the halls of Congress in 1989—our Presiding Officer remembers this—who walked the halls of Congress in 1989 lobbying on behalf of the Chinese Communist party dictatorship to get trade advantages to China. It was the CEOs of many of America's largest corporations who walked from office to office in the Senate and in the House of Representatives begging Members of the House and Senate to vote to give trade advantages to this Communist party dictatorship—this dictatorship that oppresses its people, that inflicted violence on those people in 1989, and has ever since. It was American CEOs who lobbied for trade advantages for China so that China, in the end, would take millions of jobs from the United States of America—from Galion, OH, and Toledo, OH, and Akron and Youngstown and Dayton—hundreds of thousands of jobs in my State because American CEOs lobbied this House, this Senate, and lobbied the Congress down the hall to give trade advantages to the Communist party dictatorship in China. We have paid the price. The Chinese people have paid an even more important price.

I am proud to join with Senator INHOFE to be introducing with him a resolution acknowledging the 20th anniversary of the Tiananmen Square protest and crackdown. The resolution is simple. It honors those who died in the protest. It demands that China release its political and its religious prisoners.

Today as we look back on the Tiananmen protest, we honor the lives of those who died in a struggle for freedom. Let's remember that brave, unnamed protestor in front of the tank who 20 years ago believed, like Wei Jingsheng believes, that one person can change the world through peace and nonviolence. Think what a whole nation could do.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURR. Mr. President, I ask unanimous consent to be recognized for up to 30 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, when I yielded the floor to allow Senator BROWN to speak, I was in the process of describing the substitute amendment to the base bill, H.R. 1256. Before I go back to that, let me share with my colleagues the response to a letter from

the Campaign For Tobacco-Free Kids. They assessed the substitute bill and they provided in a letter to the committee why they found the substitute to be wrong. I will use that word.

Let me take on some of the things they raised in that letter. One, they said that the Burr-Hagan bill would create a new bureaucracy that lacks the experience, expertise, and resources to effectively regulate tobacco products. I think I made it abundantly clear earlier today that under the current regulatory framework for tobacco, every Federal agency in the United States has jurisdiction in it, except for the Food and Drug Administration. So to suggest that the Food and Drug Administration has the experience or the expertise or the resources to effectively regulate this would be disingenuous. They have no experience, because they haven't been involved in regulation. They do have expertise, but expertise to prove safety and efficacy of products, not to come to the conclusion that a product is unsafe and kills. Yet they are not going to do anything to restrict its access or provide resources to effectively regulate tobacco products.

Incorporated in this base bill H.R. 1256 is, in fact, a surcharge on the tobacco industry of \$700 million over the first 3 years to fund—to provide the resources—for the FDA to regulate the industry. And it doesn't stop there, because they can't hire the folks, they can't set up the regulation until they have the ability to do the surcharge it requires, in putting it in the FDA, that you come up with \$200 million to fund the initial effort to set up the infrastructure to regulate this product. So, in fact, there were no resources. Within H.R. 1256, it creates the resources to create the framework, to create the personnel, to regulate a product they have never regulated before.

I remind my colleagues that in the substitute amendment, we set up a new Harm Reduction Center under the guidelines of the Secretary of Health and Human Services, within Health and Human Services, the same place that the FDA is. When we asked the Secretary of HHS how much does it take to fund that, they gave us a number of \$100 million a year; \$700 million for the baseline, H.R. 1256; \$100 million for this new Center of Harm Reduction, overseen by the same Secretary of Health and Human Services.

Granted, I will be the first to say that if we are creating a new agency, the agency for harm reduction, it does not have the experience, the expertise, or the resources yet, but it can search within the global marketplace to find the individuals, and the Secretary of HHS has already said \$100 million will permit us to do that function in a harm reduction center. So the first complaint, hopefully, I have disposed of.

The second complaint from the Campaign For Tobacco-Free Kids as to why they would not support the substitute amendment: The Burr-Hagan bill does

not give the FDA any meaningful authority to require changes in tobacco products. Well, I do hope somebody from Campaign For Tobacco-Free Kids is watching, because what the base bill, H.R. 1256, does is it locks in these products, nonfiltered and filtered cigarettes, and legislatively says to the FDA: You can't do anything with those products. They are grandfathered. As you heard me say, H.R. 1256 does not allow these reduced-risk products to come to market. So the tobacco industry, based upon how the legislation is written, would basically limit tobacco uses to these two categories, the 100 percent risky and the 95 percent risky.

I misspoke. Let me correct it, because within H.R. 1256 it does state that any product that was sold prior to February 2007 could, in fact, be sold. Some, not all, smokeless products fall into that category of having been sold prior to February of 2007.

One has to ask: Why February of 2007? Why is that magic? It is very simple. That is the last time they updated this bill. I am sure they updated before the markup in 2009, but they weren't even careful enough to change the effective date that cut off when a product could be sold. There can't be any other reason, because there is nothing magical to February of 2007, except that U.S. smokeless products were included, and if you include U.S. smokeless products and filtered and nonfiltered cigarettes, you might have one manufacturer that then controls about 70 percent of the market. And because you have grandfathered it all in and you have forbidden FDA from ever changing it, you have basically given an unbelievable market share to one company, and you have not allowed any other company in the world to participate because if they weren't sold before February of 2007, they can't be sold in the future. Because, as I discussed earlier, to bring a new product to the marketplace, you have to make the claim that no nontobacco user would use the product.

Yet how can you make that claim if the same provision disallows you from talking to a non-tobacco user about whether they would use the product? It is a catch-22. Yes, we created a pathway, but we also designed it in a way that you couldn't meet the threshold needed to have an application approved. It is very simple.

Two was that the Burr-Hagan bill doesn't give the FDA meaningful authority to require changes in tobacco products. They are 100 percent correct. Nor does H.R. 1256. As a matter of fact, not only does it not allow for changes, it legislates there cannot be changes to products sold before 2007. If the Campaign for Tobacco-Free Kids is trying to reduce the risk of death and disease and usage, it has supported the wrong bill.

Third, the Burr-Hagan bill will harm public health because it perpetuates the consumers' misconception that they can reduce their risk of disease by

switching to so-called low-tar cigarettes. Our bill goes further than the Kennedy-Waxman legislation by banning the use of terms such as "light," "ultra-light," "medium," and bans the use of candy, fruit, or alcohol descriptors on cigarettes even if not characterized in the legislation.

In addition, the risk reduction center is required to establish a relative risk ranking for tobacco and nicotine products annually and disseminate that information to the public. This preempts any unsubstantiated lower or reduced-risk consumer communications by a tobacco manufacturer. In other words, under H.R. 1256, the FDA does not have to inform the public about the relative risk of the products they regulate. So they are not going to share with the people that if you smoke filtered cigarettes, it is a 100-percent risk, and unfiltered is a 90-percent risk. In the substitute that is being offered, we require the harm reduction center to annually print a list of what the risks of the products are that are tobacco related and that they regulate.

The fourth complaint by the Campaign for Tobacco-Free Kids is that the Burr-Hagan bill doesn't strengthen warning labels in a meaningful way. Well, actually, our bill incorporates the same warning levels for cigarettes contained in the Kennedy-Waxman legislation and requires they be placed on the bottom 30 percent of a cigarette pack, including Senator ENZI's graphic warning label language. Also, our amendment goes further than H.R. 1256 by requiring the disclosure of ingredients on the back facing of a tobacco product packaging.

Let me state what the claim was: The Burr-Hagan bill doesn't strengthen warning labels. The only thing I can think is that the Campaign for Tobacco-Free Kids didn't read my bill or it doesn't know the difference between identical language in H.R. 1256 and the Burr-Hagan substitute because the wording is actually the same. In addition, we require that the ingredients in those products be listed on the pack, which I think is beneficial to consumer choice.

Fifth, the Burr-Hagan bill doesn't adequately protect consumers from misleading health claims about tobacco products. Well, once again, our bill requires the same rigorous standards used in H.R. 1256 for reducing the risk of tobacco products. Furthermore, it requires the harm reduction center to establish and publish the relative risk of tobacco and nicotine products on an annual basis. Unlike Kennedy-Waxman, this legislation also requires disclosure on individual packs of all ingredients.

The sixth complaint by the Campaign for Tobacco-Free Kids is that the Burr-Hagan bill gives the tobacco industry license to create ways to market to youth. We have covered this. Our bill is much more comprehensive. It eliminates print advertising. There are marketing prohibitions and restrictions over and above what H.R. 1256 does.

Last, the bill gives the tobacco industry undue influence and creates gridlock on an important scientific advisory committee by giving the tobacco industry the same number of voting representatives as health professionals and scientists—a 19-member board with 10 health care experts, 4 members of the general public, 2 representatives of tobacco manufacturing, 1 representative of small tobacco manufacturing, 1 representative of the tobacco growers, and 1 expert on illicit trade of tobacco products. Somehow, 14 health care experts and 1 trade expert can be depicted by the Campaign for Tobacco-Free Kids as being the same number as 4 tobacco-related members of the advisory board. So clearly, 15 without a tie to tobacco, 4 with a remote tie to tobacco, and the Campaign for Tobacco-Free Kids said that by giving the tobacco industry the same number of voting representatives as health care professionals and scientists—Mr. President, the American people deserve an honest debate. They deserve the information on one side of a bill or another to be factual. I am not sure how you can look at 15 individuals in one category and 4 in another and portray for a minute that is the same number. But that is what the Campaign for Tobacco-Free Kids does. If, in fact, they have misled in the letter to the committee about H.R. 1256 and the substitute, what else haven't they told us or what else have they told us that is not accurate? It brings into question that effort and, clearly, in 1256, the effort is not to reduce the risk of disease or use of tobacco products.

Mr. President, how much time do I have?

THE PRESIDING OFFICER. The Senator has 16 minutes.

Mr. BURR. When I ended talking about the substitute, I held up this can of Camel Orbs and I told the Members of the Senate that this was a product that currently is rated at about a 1-percent risk, or an 89 percent reduction from typical nonfiltered cigarettes. It is an 89 percent reduction from nonfiltered cigarettes. I will hold one up. It is a dissolvable tobacco. You don't get lung cancer or COPD from it, and it doesn't cause heart disease. There is a 1-percent risk. But under H.R. 1256, this product is outlawed. Why? Because it wasn't sold before February 2007.

Let me say to my colleagues, if the intent of passing Federal regulation of the tobacco industry—and I am supportive of it—is to reduce death and disease, why would you exclude a product that has a 1-percent risk but then grandfather in products with a 100-percent likelihood of killing you? Even if you are not debating whether it is in the FDA or in the harm reduction center, how in the world can a Member of the Senate say it is OK to eliminate the ability for an adult to choose to use this and to be locked into a certain death?

We are supposed to pass policy that makes sense and that works for the American people, that actually reduces

the risk of death, disease, and usage of tobacco. When you lock them into the highest risk and likelihood of death, you haven't fulfilled that. When you don't require States to use the money they were given for cessation programs, how can you expect that you are going to reduce youth usage? When you see that 48 States have a higher prevalence of marijuana use among youth than they do of tobacco, how can you conclude that by giving the FDA jurisdiction to regulate tobacco, somehow that means you are going to have a reduction in youth usage? It is just not going to happen.

The American Association of Public Health Physicians states that this product, Orbs, is the most effective way to fight death and disease associated with current tobacco use. Again, the American Association of Public Health Physicians states that these are the best tools we have to get people to quit smoking. As a matter of fact, I am proud to say that yesterday the American Association of Public Health Physicians endorsed the substitute amendment and not the base bill because they recognize that the base bill does nothing but provide a pathway to certain disease or death.

Just so I am clear, under the base bill, H.R. 1256, Marlboro is cemented on the retail shelves. Camel Orbs, which reduces death and disease associated with tobacco use, is banned, can't be sold; It wasn't on the market before January 2007, and Marlboros are on the shelf.

Snus is banned. In the past 25 years, Swedish men showed a notable reduction in smoking-related disease, a decline in lung cancer incidence rates to the lowest of any developed nation, with no detectable increase in the oral cancer rate, improvement in cardiovascular health, and the tobacco-related mortality rate in Sweden is among the lowest in the developed world. But in our infinite wisdom in this austere body, we are getting ready to pass a bill that takes a product that Sweden used to get people off cigarettes, to reduce lung cancer, to bring down cardiovascular disease, to reduce mortality by tobacco products, and we are going to eliminate it and we are going to lock them into everything Sweden is trying to get rid of. Think about this before you do it, for God's sake. Once you pass this, it is too late.

Mr. President, the current cessation programs don't work. I said earlier that those products have a 95-percent failure rate. Giving current smokers an opportunity to migrate to a less harmful product—it is a public health initiative, and not creating a pathway to reduce harmful products is not a public health bill. But those products are banned in H.R. 1256.

Senator HAGAN's and my amendment allows these products to be marketed and regulated correctly. Our amendment establishes a tobacco harm reduction center within the office of Health and Human Services. We provide the

harm reduction center with the regulatory authority to better protect our children from tobacco use and significantly increase the public health benefits of tobacco regulation. We require tobacco manufacturers to publish ingredients of products. We require the harm reduction center to rank tobacco products according to their risk of death and disease associated with each type of tobacco product in order to inform the American public more fully about the risk and harm of tobacco products.

We ban candy and fruit descriptors of cigarettes. We ban the use of the terms "light" and "low tar." We give the Harm Reduction Center the authority to review smoking articles and adjust accordingly to what is in the best interest of public health. What we don't do is give an already overburdened agency the responsibility to regulate tobacco.

We have a change in administrations. As supportive as I am of the new Commissioner of the FDA, Margaret Hamburg—she will do a wonderful job—let me turn to the former Commissioner of the FDA. Two years ago, Andy von Eschenbach gave his opinion on the FDA regulation of tobacco. You might say: Gosh, this was 2 years ago. I think I already made a credible case that most of what is in this bill was written 10 years ago. Even some of the deadlines that are in the bill have not been changed since the bill was updated 2 years ago. So I think it is very credible to use the comments of the former FDA Commissioner 2 years ago:

The provisions in this bill would require substantial resources, and FDA may not be in a position to meet all of the activities within the proposed user fee levels . . . As a consequence of this, FDA may have to divert funds from its other programs, such as addressing the safety of drugs and food, to begin implementing this program.

All of a sudden, we are right back where I started 3 days ago. Why in the world would we jeopardize the gold standard of the Food and Drug Administration, the agency that provides the confidence to every consumer in the country that when they get home at night, after having a prescription filled, they don't have to worry about whether it is safe or effective; that if they go to a doctor or hospital and they use a device on them, it wasn't something crafted in the back room and nobody reviewed that it was safe or effective; that it had the gold standard, the seal of approval of the Food and Drug Administration; that as biologics were created that did not exist 10 years ago, that we could feel certain that the FDA looked at this new product and approved it for use in humans; that when we went to buy food, our food would be safe.

Do we want to jeopardize the FDA having to divert funds from food safety right now when we have had Americans who have been killed? Do we want a reviewer at FDA, whose gold standard is to prove safety and efficacy on all the

products they regulate, except for the tobacco, to lower their guard and let something through that did not meet the threshold of safe and effective?

I am not sure that is in the best interest of America. I am not sure it is in the best interest of the American people.

My colleague from Connecticut came to the floor and said the Food and Drug Administration is the only agency that has the experience, the expertise, and the resources. The Commissioner of the Food and Drug Administration said: I don't have the resources, and if you give this to me, I might have to divert funds from other programs. As a matter of fact, they would have to divert people from reviewing the applications for new drugs, new biologics. It could be that somebody who is waiting for a new therapy dies before the therapy is available because we had to divert funds or people to take care of regulating a product that the FDA has never regulated and for which Commissioners of the FDA told us they did not have the funds.

I am not sure how clear we need this. I said when I started on Monday this was an uphill climb, the deck was stacked against me. I understood the threshold was come to the Senate floor and to spend as much time as it took to convince my colleagues—Republicans and Democrats and Independents—that this was not a bill where one party trumped the other.

Senator HAGAN is a Democrat; I am a Republican. We have come to the floor passionately with our substitute amendment because we think it trumps H.R. 1256 from a policy standpoint. The American people expect us to pass the right policy, not any policy. If the FDA is not the appropriate place to put it, the American people expect us to find something else that meets the threshold of the right regulation but does not encumber the gold standard of an agency on which we are so reliant.

I am hopeful we are going to have a vote this afternoon on the substitute. It will be next week before the base bill is voted on. I say to my colleagues, they are only going to have one opportunity to change this bill. That one opportunity is to vote for the substitute amendment. If they vote for the substitute amendment, they are going to vote for a bill that actually reduces the risk of death and disease for adults who choose to use tobacco products. If they vote for the substitute, they are actually going to vote for a bill that actually reduces youth usage in a real way. If they pass on supporting the substitute—and it will be a close vote—if they pass on supporting it, they are going to have to live with what they do to the FDA. They are going to have to live with the consequences.

When I came to the Congress, the House of Representatives, in 1995, I was given the task of modernizing the Food and Drug Administration. We opened the Food and Drug Administration in its entirety. It took 2½ years to

produce a bill. It was a bipartisan bill. As a matter of fact, I think in the Senate and in the House it passed by voice vote.

Why did it take 2½ years, two Congresses? It is because we understood, at that time, the delicacy of what we were attempting to do. We were attempting to modernize the Agency and to maintain the gold standard.

At the end of the day, no Member of the House or the Senate offered an amendment to give the FDA jurisdiction over tobacco. In 1998, that bill became law. Why didn't they? It is because every Member knew it was not worth the risk of giving them the responsibilities of tobacco when we had spent 2½ years trying to protect the gold standard.

We are not that forgetful. Don't forget our commitment to make sure the gold standard of the FDA is intact. Don't jeopardize it by giving them tobacco. Don't let our kids be sold short by producing a bill that does not do the education they need so they never pick up a tobacco product. Don't lock the adults who choose to use risky products to risky products forever. Give them an opportunity to have less harmful products. That can only be done one way. That can only be done if Members of the Senate vote to support the Hagan-Burr substitute.

It does keep kids from smoking. It does preserve the core mission of the FDA. It does reduce the risk of death and disease.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I rise in support of the Family Smoking Prevention and Tobacco Control Act. We all know someone who is currently a smoker or someone who has been a smoker. I know we all worry about their health. That is with good reason.

Tobacco use is the leading preventable cause of death in the United States. It kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

Let me repeat that because it is hard to believe. The fact is, tobacco use kills more people each year than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined. Tobacco-related health problems affect millions more, resulting in skyrocketing health care costs every year.

The cycle of addiction is so hard to break, and the tobacco companies work hard to attract smokers with flashy marketing campaigns and by including chemicals that are proven to be addictive. Undoubtedly, this hurts our Nation's overall health.

There is no question that one of the most important steps the Senate can take to improve health and to reduce costs is to reduce the use of tobacco. That is why this legislation is so important, why I am proud to be one of the 53 cosponsors of this legislation. Again, over half the Senate is cosponsoring this legislation.

I thank Senator KENNEDY for his leadership and work on this important issue over so many years. I thank Senator DODD for managing this bill on the floor.

Throughout my career, I have advocated for smoking prevention. We all realize the cost in lives and in health care expenses that smoking creates, not only to the consumer but also to those who are exposed to the dangerous secondhand smoke.

In New Hampshire, almost 20 percent of adults smoke cigarettes, and tobacco-related health care expenses in New Hampshire amount to \$969 million a year.

During my tenure as Governor, I was proud to sign legislation that banned the sale of tobacco products to minors, that prohibited the possession of tobacco products by children, and that required the New Hampshire Department of Health and Human Services to disclose harmful ingredients in tobacco products.

The important legislation we are considering expands on what New Hampshire has done. It will give the FDA the authority to regulate the manufacturing, marketing, and sale of tobacco products.

In New Hampshire this year alone, 6,300 children will try cigarettes for the first time. Just over a third of these children will become addicted lifelong smokers. The tobacco companies know these statistics and target much of their marketing to this vulnerable population. In fact, published research studies have found that children are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to smoke by marketing than by peer pressure. This year in New Hampshire alone, the tobacco companies will spend \$128 million on marketing, much of it geared to kids.

Tobacco companies also attract children to their products by using flavors, such as Twista Lime or Kauai Kolada, which says it contains "Hawaiian hints of pineapple and coconut," or Winter Mocha Mint. It doesn't sound like we are talking about tar-filled cigarettes, does it? It sounds like we are talking about ice cream or candy. But, unfortunately, these fruit and mint flavors not only entice kids to try them but also makes the smoke less harsh, more flavorful so it is actually easier for kids to smoke.

Unfortunately, they do not make cigarettes less dangerous or less addictive. The tobacco companies do not stop at just the flavors to attract kids. They package the flavored products in colorful and fun patterns clearly aimed at attracting children to their products.

Norma Gecks of Derry, NH, reports that her youngest child is 19 and is addicted to smoking. He buys the mint- and fruit-flavored products and by now is smoking up to two packs a day. Already at age 19, he has developed a smoker's cough.

Keith Blessington of Concord is now an adult, but he is also a victim of childhood addiction. He smoked his first cigarette after a basketball game when he was only 17. Recently, he was diagnosed with advanced stomach cancer and told me he has about a year to live. Despite this awful situation, despite the fact that he has cancer, he will tell you plainly: I am addicted. He cannot quit.

We need to enact this legislation to help people in New Hampshire and across the country, people such as Keith, people such as Norma's son. Tobacco products and marketing geared to kids need to end. We cannot afford to let another generation of young people put themselves at risk by becoming addicted to tobacco products and suffering the lifelong consequences of their addiction or, even worse, dying.

For decades, tobacco companies have targeted women and girls. But in the last 2 years, the industry has significantly stepped up its marketing efforts aimed at our daughters and granddaughters, and we have a picture of one of the ads R.J. Reynolds uses. It is their new version of Camel cigarettes targeted to girls and women, and it is Camel No. 9—sort of a takeoff on some other product descriptions we have heard. This cigarette has sleek, shiny black packaging, flowery ads, and, as you can see, the enticing slogan "light and luscious." This advertisement has appeared in *Cosmopolitan*, *Glamour*, *InStyle*, *Lucky*, and *Marie Claire* magazines, and it has been effective. Today, about 17 percent of adult women and about 19 percent of high school girls are smokers. That is more than 20 million women and more than 1.5 million girls who are at increased risk for lung cancer, for heart attacks, strokes, emphysema, and other deadly diseases. These statistics are staggering, and it is important to remember they represent mothers, grandmothers, aunts, sisters, colleagues, and friends.

Seventeen-year-old Cait Steward of Dover, NH, has seen these Camel No. 9 advertisements. She saw them in *Glamour* magazine. But fortunately, she sees through the marketing campaign. She says:

Tobacco companies advertise to try and get me and my friends to smoke. They try to make young girls think that smoking is sexy, glamorous, and cool. They know that if they get us to start smoking now we will be addicted for years to come.

It is not just cigarettes that we are attempting to regulate in this legislation. The tobacco companies have also developed new products that are both smokeless and spitless. They are just as addictive as those products you smoke, however, and they are just as deadly. Like cigarettes, they do not have any FDA regulation, and the consequences are dire.

I want to show a photo of a young man named Gruen Von Behrens. He is an oral cancer survivor. He has had more than 40 surgeries to save his life,

including one radical surgery, and you can see how it left him in this picture. It removed half his neck muscles and lymph nodes and half of his tongue. Like too many teenagers, Von Behrens first tried spit tobacco at age 13 to fit in. By age 17, he was diagnosed with cancer. How can we let this happen? Tobacco companies are targeting our children, and it is our job to protect them.

This legislation is vital to our children and to our Nation's health. It will prevent the tobacco companies from marketing to children. It will require disclosure of the contents of tobacco products, authorize the FDA to require the reduction or removal of harmful ingredients, and force tobacco companies to scientifically prove any claims about reduced risk of products.

The FDA is the proper place to have this authority. It is responsible for protecting consumers from products that cause them harm. The FDA even regulates pet food. Yet it doesn't have the authority to provide oversight for tobacco—one of the most dangerous consumer products sold in the United States.

Under this legislation, the FDA will oversee tobacco products with the same objective and the same oversight with which it directs all of its activities—to promote and protect public health. It has the necessary scientific expertise, regulatory experience, and public health mission to do the job. We can't wait any longer to make the necessary changes that will impact the lives of so many people we know and love.

Again, I thank Senator KENNEDY for his outstanding leadership on this issue and join many of my colleagues in supporting this important legislation that will save lives in New Hampshire and across the country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWNBACK. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

NORTH KOREA

Mr. BROWNBACK. Madam President, I rise to speak briefly about North Korea and what is taking place there. To put some of this in context, I think everybody knows—around the country and the world—what North Korea is doing today. Two Americans are on trial, in a crazy setting. They have a missile on a pad that can reach the United States. They have tested another nuclear device. They have tested previously a nuclear device. They are in the throes of some sort of possible change within the regime. It is a very unstable, very provocative situation in North Korea.

I raise all that because at the end of the Bush administration, they took North Korea off the terrorism list, and they did it as a way to try to negotiate, to try to get them into the six-party talks to do more things and to work with us and with the world community.

Since that period, the North Korean Government has taken the exact opposite tack. Instead of working with us, they have done everything they can to provoke us even further. President Bush, when he took North Korea off the terrorism list, said:

We will trust you only to the extent that you fulfill your promises . . . If North Korea makes the wrong choices, the United States . . . will act accordingly.

That was President Bush. He is, obviously, not President any longer. At that point in time, many of us objected to taking North Korea off the terrorism list, but he went ahead and did it anyway. Then Candidate Obama said, at roughly that same period:

Sanctions are a critical part of our leverage to pressure [North Korea] to act. They should only be lifted based on North Korean performance. If the North Koreans do not meet their obligations, we should move quickly to reimpose sanctions that have been waived, and consider new restrictions going forward.

Since President Bush said that, since Candidate Obama said that, here is what the North Korean regime has done. I mentioned some of these, but I will go into detail. They have: launched a multistage ballistic missile over Japan; kidnapped and imprisoned two American journalists; pulled out of the six-party talks, vowing never to return; kicked out international nuclear inspectors and American monitors; restarted their nuclear facilities; renounced the 50-year armistice with South Korea; detonated a second illegal nuclear bomb; launched additional short-range missiles; are about to launch a long-range missile capable of reaching the United States; and, at this very moment, are calling the detained American journalists, Laura Ling and Euna Lee, before a North Korean court, if you could even call it that possibly, to answer for supposed crimes of illegal entry into North Korea and unexplained hostile acts. The two could face years in a North Korean labor camp. That is what has taken place since those statements.

We want to put forward an amendment on this bill or on some future bill—but I would like to do it and we should do it on this bill—to label North Korea a terrorist state again, like President Bush said we should, if they don't act right; like Candidate Obama said we should, if they don't fulfill their obligations. We think the administration should do this now, should relist them as a terrorist state. We think it would be an important vote and statement by this body if we would say the North Korean Government is a terrorist government because it is. It is one of the lead armers to provide armament to rogue regimes and individuals

around the world. Some of my colleagues may have seen the story this week about a North Korean general who was one of the lead counterfeiters in the world of United States one hundred dollar bills. They were very good quality, done on state machinery I have no doubt. He is one of the lead counterfeiters around the world.

Why, then, the State Department would say earlier today that they don't think this "meets the test" is beyond me. I think this body should vote and send a very clear signal that we believe the North Korean regime should be listed as a terrorist state and a terrorist sponsor. It has taken an incredible list of provocative acts. The Obama administration has said: Let's get the U.N. to issue sanctions against them.

Let's get the United States to do our sanctions against them for what they are doing. All this amendment does that I want to vote on is have the administration place North Korea back on the terrorism list, where it rightly deserves to be and should have been all along. Of course, the amendment does allow the President to waive the requirement of relisting so long as he certifies that certain conditions have taken place, that they have met their obligations, which they clearly are not going to.

I think it is wrong for this body not to be clear on this toward North Korea. It is wrong for this country not to be clear toward North Korea of what we believe of their provocative actions, that we will not stand by and say: Yes, you can keep doing this; yes, you can keep launching missiles; yes, you can keep detonating nuclear devices, and we will not do anything. We should be clear we are going to act. These are wrong and provocative actions, and they deserve the minimum response this is. That is why I would like to get a vote on this amendment. I would hope I would get a unanimous vote by my colleagues to relist them as a terrorist state. I would hope we could get that up on this bill. We are in negotiations now with the majority leader about this. It is time to vote. It is time to send this at least minimal message to the North Korean Government that these actions cannot stand without some response from the United States. I hope we could get a vote up on this.

I urge the majority leader and those working on coming up with an agreement to go to the next bill to allow us to vote on this North Korean amendment to provide these sanctions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. REID. Madam President, there are a number of amendments that have been filed that are at the desk. They haven't been offered as yet. Amendments on both sides in agreement should be considered. We were very close on working out an agreement to do just that. The vast majority of the amendments will be germane postcloture. I have indicated that for those that are arguably germane, I would be willing to work with the person who offered the amendment to have a vote on it. But one Senator has held this up. That is the way things can happen around here. It is unfortunate, but it does happen. We worked for a couple of days trying to arrive at the point we are. The sad part about it is the Senator who has held all this up has an amendment that isn't remotely germane to this bill, but he has lodged an objection to this agreement that is agreeable by all other Senators. I would hope that the Senator would reconsider this objection over the next few days.

In the meantime, I have had conversations with the managers of the bill. I have spent a lot of time with Senator DODD. It is an important piece of legislation. I watched the Presiding Officer offer her speech today. What a sad thing, the man she spoke about. A picture is worth a thousand words. The picture that she had when she was talking about this bill and how important it is was worth more than a thousand words.

I will have more to say about this on Monday, but everyone in my family smokes. Sadly, my parents are dead. My dad's miner's consumption was terribly exacerbated by his smoking. So when did he start smoking? He was a kid. He started smoking as a little boy. The same with my mother. The same with my brothers. One brother started when he was in the Air Force. He was I guess 20 years old or something like that. He wasn't very old. But the others, all of my other family members, started smoking as kids. One of my brothers chewed tobacco. I can remember I had a friend who learned that my brother chewed tobacco. He was a lobbyist for the tobacco industry and he said, Oh, I will send him a case of—what kind does he chew? I didn't think that was a good idea.

In Los Angeles last week I met the first lawyer who filed litigation, serious litigation against the tobacco industry—a wonderful man. He got terribly upset with the Joe Camel advertisements, when they placed that little comic strip character on lunch boxes for kids. He also was upset because at that time the tobacco industry went through another one of their ideas to get kids to start smoking in stores, like a 7-Eleven store. They would have bins of cigarettes out there. You are supposed to pay for them, but they were there. Kids could steal them so easily. So he filed this lawsuit. He had

the confidence to tell me he lost that lawsuit. But when all the lawyers got together to go after the tobacco companies big time, they pooled their money and went after the tobacco companies, and they used all of his pleadings. He said even the misspelled words they used. They didn't change anything. Ultimately, that led to the favorable ruling by the courts that tobacco companies were liable for the damages in the billions of dollars.

It is important that we move forward. I hope that cloture would be invoked on this Monday afternoon. It is one of the most popular pieces of legislation we could do. I am sorry we weren't able to work anything out on the amendments, but we simply were not able to do so. No one can complain this entire Congress that we haven't had the ability to offer amendments. We were concerned for a lot of reasons. One is we have the supplemental appropriations bill floating around here and we didn't want a lot of nongermane amendments on this, but there were no restrictions whatsoever on even nongermane amendments. We just wanted—every Republican wanted to look at ours; we wanted to look at theirs. We used to do that a lot. We can still do that. But no one can complain and use it as an excuse to not vote for this bill, that we haven't given them a chance to offer amendments.

So I hope Senators will take a look at this to move forward. Let us invoke cloture and complete this legislation. I have already indicated I would be happy to work out something that would be fair to dispose of the amendments that are germane to this bill that have been filed.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I wanted to begin by thanking the majority leader for his efforts and those of others, and to agree with him. We are prepared to debate these germane amendments, or amendments that are arguably germane, and it is regrettable we couldn't do that. This bill has enjoyed overwhelming support in both Chambers in previous Congresses. Our colleague from Massachusetts has been the leading champion of this effort for more than a decade, if not longer. As I pointed out, every single day we fail to act on this legislation, the statistics are that 3,000 to 4,000 children will begin to smoke every day; 400,000 of our fellow citizens will die this year, not to mention thousands who will live very, very debilitated lives as a result of being contaminated by cigarette smoke and tobacco products. Here we are on the eve of a national health care debate where a major part of that will be about prevention, and what better way to begin that debate than the Congress taking a step in this area which could make such a difference.

So I thank the majority leader for his efforts. I am still hopeful we can get this done. I believe we can. People such as Senator BURR and Senator

HAGAN who have legitimate interests and concerns about the legislation before us deserve to have their amendments considered, debated, and discussed. In fairness to other Members, it is regrettable that one single Member of this body, on a totally nongermane proposal, can cause us to delay or avoid meeting the obligation of the issues and concerns about tobacco and the effects on our citizenry.

So I thank the majority leader for his efforts. We will be here next week to debate those amendments and hopefully our colleagues will invoke cloture so we can get to this matter.

Mr. REID. Madam President, let me say, while the distinguished Senator from Connecticut is on the floor, the chairman of the Banking Committee and the manager of this bill, Senator ENZI has been a real partner in what we have done here. He asked that we do a committee hearing on this bill. We could have brought it to the floor under rule XIV. This bill has had lots of hearings in the past, but because Senator ENZI is such a gentleman and he thought it would be the right thing to do, we went ahead, in spite of a very difficult schedule that we had and the schedule that especially Senator DODD had, of all of the things that we were doing under the jurisdiction of that Banking Committee, but with Senator KENNEDY's help, he was the one who was obligated to do this legislation. So we have done that. We have jumped through all the hoops. I repeat, I hope no one will use as an excuse to not vote for cloture that we have been unfair in moving forward on this bill, because it would be unfair for them to say that we have been unfair.

Madam President, I ask unanimous consent to terminate morning business and have the bill reported.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

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

The assistant legislative clerk read as follows:

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

Pending:

Dodd amendment No. 1247, in the nature of a substitute.

Burr/Hagan amendment No. 1246 to amendment No. 1247, in the nature of a substitute.

Schumer for Lieberman amendment No. 1256 to amendment No. 1247, to modify provisions relating to Federal employees retirement.

The PRESIDING OFFICER. The majority leader is recognized.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion on the Dodd substitute amendment to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 1247 to Calendar No. 47, H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Benjamin L. Cardin, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Tom Harkin, Sherrod Brown, Debbie Stabenow, Richard Durbin, Mark Udall, Edward E. Kaufman.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk. This is on the bill itself.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Calendar No. 47, H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Debbie Stabenow, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Richard Durbin, Mark Udall, Edward E. Kaufman, Tom Harkin, Benjamin L. Cardin, Bill Nelson.

Mr. REID. Madam President, I now ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. REID. Madam President, I ask unanimous consent to go into a period of morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. MCCAIN. Reserving the right to object, what did we do?

Mr. REID. We just went into morning business. We would like to go into morning business.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Madam President, I have an amendment that I have been trying to get a vote on, I would say to the distinguished majority leader, and it certainly is important to the American people.

It is certainly important on this bill and the function of the FDA concerning the importation of prescription

drugs into this country. I believe the Senator from North Dakota has an amendment. I would agree to a time agreement of an hour to be equally divided, or half hour, and then vote on it.

I think the American people ought to know whether we are going to be able to import prescription drugs into this country so we can save them billions of dollars every year, rather than taking so much of their hard-earned money, especially retirees.

Mr. REID. Madam President, I am happy to respond to my friend. We have been trying for 2 days to move forward on germane amendments. I have had several conversations with Senator DORGAN. I know how important it is to him. I voted with him, and I do every time this matter comes up. As I indicated earlier, I would be happy to work out some kind of agreement.

At this time, until we get some ability to vote on the germane amendments, it doesn't seem like the right thing to do. I am willing, as I have indicated to my friend, Senator DORGAN, to work out an arrangement for him to offer this amendment. This is something that should have been done, I am sorry to say, years ago, not weeks ago. I will work with the Senator from Arizona on this drug reimportation issue, which is important. At this stage, we simply cannot do it; I know of no way to get from here to there.

As I said—and the manager of the bill is here—if we can work something out by Monday, I will be happy to try to work something out. Nobody is trying to stop the Senator from offering that amendment. We have to have an agreement to move forward on the other stuff first because it is germane.

Mr. MCCAIN. Will the Senator yield?

Mr. REID. Yes, without losing my right to the floor.

Mr. MCCAIN. Mr. President, I am very appreciative of the difficulties the majority leader faces on a bill of this nature, the challenges of amendments being nongermane, and also the difficulties he faces in managing legislation. This issue has been around for a long time, I say to my friend from Nevada. We should address it. It is important to the American people. It does have a lot to do with pharmaceuticals in this country and the availability.

Again, I point out to the majority leader that there should not be a lot of debate on this. People have taken their positions.

I have an e-mail that was sent to us by mistake by the lobby for PhRMA, regarding how important it is to stop this amendment and not have a vote on it. If my friend will indulge me, this is urgent. This is from, as I understand it, one of the lobbyists for PhRMA:

The Senate is on the tobacco bill today. Unless we get some significant movement, the full-blown Dorgan or Vitter bill will pass as an amendment and a Cochran or Brownback safety amendment will fail.

(1) We need to locate a Democratic lead co-sponsor for the second degree amendment—which will be either BROWNBACK or COCHRAN. Can the J&J, Merck, Novartis, Pfizer and the

other New Jersey companies coordinate and contact Senator MENENDEZ's office and ask him to take the lead?

(2) We are trying to get Senator DORGAN to back down—calling the White House and Senator REID. Our understanding is that at least Senator MCCAIN has said he will offer regardless, so even if DORGAN withdraws, he may still go forward.

We believe we have 39 'yes' votes for a safety second degree amendment and 25 members in the 'undecided' column. KENNEDY—who whipped this for us last time—is not here.

We are scheduling a call for later this morning to follow up on our targets from yesterday's whip call. Please make sure your staff is fully engaged in this process. This is real. We only had six companies participate in the last call.

My friends, that is a little insight as to how the special interests in Washington work. I would like to have a vote on this amendment, I say to my friend from Nevada, with a full appreciation of the difficulties he has in getting this legislation through—a very important piece of legislation.

I thank my friend from Nevada for his indulgence and allowing me to read that e-mail.

Mr. REID. Madam President, that is kind of an insight—I don't know who is on first, but that is pretty interesting.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

UNANIMOUS CONSENT REQUESTS—EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 132, the nomination of William Sessions to be Chair of the U.S. Sentencing Commission.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, we have not had an opportunity to get that cleared on this side. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the nomination of Robert Groves to be Director of the Census.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, I make the same observation with regard to this nominee. We have not yet

been able to clear it on this side. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

ORDER OF BUSINESS

Mr. REID. Madam President, for the information of Senators, there will be no more votes today. I indicated earlier that we would be out by 6 today. A number of things are going on. We will work on a number of issues over the weekend, including the tobacco issue and other issues. We will vote on Monday at 5:30 on the cloture motions that were filed earlier this afternoon.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. DODD. Madam President, I listened carefully to the conversation between the majority leader and our colleague from Arizona. As the manager of this bill on smoking, I for one have been a strong advocate for the reimportation proposal. Others have also expressed an interest in this. Most of my colleagues have expressed views, and a majority have expressed support for the idea. This is not about denying a vote on reimportation. We would all like that opportunity.

However, this bill on smoking and children is about as fragile a proposal as I have seen here in a long time. There are strong voices that wish to kill this legislation, and they effectively have. The FDA has jurisdiction over almost every product—except tobacco—including pet food. We waited 10 years trying to get to this bill. If you lose one or two votes on this—if we lose this again, we are back to the last decade.

There will be any number of attractive ideas proposed to this legislation, many of which I have either supported or would like to, but we will run the risk of breaking up the necessary 60 votes to deal with children and smoking. So no matter how appealing some amendments may be, understand what you may be doing, and that is destroying the ability to deal with the 3,000 to 4,000 kids who start smoking every day and the 400,000 people who die every year from tobacco. I want to vote on reimportation as well and a lot of other issues. If every time we bring up a bill of this significance and somebody offers a very appealing proposal—understand that the danger is that you fracture that relationship. That has denied us the opportunity to pass this for a decade, despite the fact that both bodies have voted overwhelmingly but not in the same Congress.

We are on the brink of getting this done. What better thing could we accomplish on the eve of the health care debate than to start saving lives of children? I have 76,000 kids in Connecticut who will die because they are smokers if we do nothing. There are 6

million children today who are going to die prematurely because of smoking if we do nothing. As much as I want to deal with reimportation of drugs, if we do that and it is adopted and we lose the coalition on smoking, what have we achieved? The bill dies. You lose both reimportation as well as the smoking proposal.

I appreciate the majority leader taking the position he did. I know where he stands on the issue. Senator REID has been a strong advocate of reimportation. That is not the issue here. It is whether at long last, a decade later, our colleague from Massachusetts, Senator KENNEDY, and Senator DeWine, a former colleague from Ohio, Henry Waxman from California, Tom Davis of Virginia, who on a bipartisan basis have tried year in and year out to get this done—we can finally achieve it. So I know the game. But this is not a game, this is life and death for people. For 10 long years, we have not been able to pass legislation involving kids and smoking. We can get it done in the next few days. If people insist upon nongermane amendments based on a short-term appeal that denies us that opportunity, we will have done great damage to our country.

I appreciate the position the majority leader has taken. My colleagues know, because I went through the process last week in committee, there were any number of appealing amendments. I thank the members of the committee who wanted to vote for some of those amendments. I see Senator MERKLEY here, a member of our committee. He and I would have liked to have supported additional amendments, fines and such, for kids. We knew that if we did that, we might break that fragile coalition that would get to us the goal line of passing the bill.

I thank the majority leader for standing up on an issue he cares deeply about, the reimportation of drugs. He understands, as does the Presiding Officer, as do all of us here who have loved ones who have been smokers and have been affected by tobacco and the damage it does to our citizenry. It is the only disease I know that is self-inflicted. There are more deaths each year as a result of smoking and tobacco products than alcohol, drugs, suicide, automobile accidents, and AIDS combined. It is the greatest killer in America. We have a chance to make a difference. The day will come for reimportation. We ought to get to that. If you do it on this bill, you lose both reimportation and the smoking bill.

I thank the majority leader and yield the floor.

Mrs. BOXER. Madam President, I urge my colleagues to join me in support of the Family Smoking Prevention and Tobacco Control Act, a comprehensive effort to address the threat of tobacco products to public health.

This bill will finally give the Food and Drug Administration the legal authority it needs to prevent the sale of

tobacco products to minors, make tobacco products less toxic and addictive for those who continue to use them, and prevent the tobacco industry from misleading the public about the dangers of smoking.

As the leading preventable cause of death in the United States, tobacco use kills over 400,000 Americans a year. More deaths in the U.S. are caused by tobacco use than from illegal drug use, alcohol use, motor vehicle accidents, suicides, and murders combined. This legislation takes crucial steps to save the lives of as many as 80,000 Americans every year.

Sadly, our failure to address this issue is having the greatest effect on our Nation's children. Ninety percent of all new smokers are children. In just 1 day, about 3,500 children will try their first cigarette and 1,000 more will become daily smokers. In just 1 year, kids in my home State of California will purchase 78.3 million packs of cigarettes.

Even though studies have shown children are twice as sensitive to tobacco advertising as adults and that one-third of children experiment with smoking due to advertising, marketing for tobacco products is virtually unregulated. Each year, the tobacco industry spends \$13.4 billion nationwide on advertising. Granting the FDA the authority to regulate tobacco advertising will reduce targeting of kids and crack down on false claims.

Additionally, this bill will grant the FDA the authority to regulate smokeless tobacco—particularly those products that have been designed to appeal to children, such as tobacco candy. Claims by the tobacco industry that these products are safe alternatives to smoking are dangerous and wrong. In fact, the Surgeon General has determined the use of smokeless tobacco can lead to oral cancer, gum disease, heart attacks, heart disease, cancer of the esophagus, and cancer of the stomach.

This legislation will ensure that tobacco companies can no longer market addictive carcinogenic candies targeted at children without review by the Food and Drug Administration and careful regulation to safeguard the public health.

Cigarettes contain 69 known carcinogens and hundreds of other ingredients that contribute to the risk of heart disease, lung disease, and other serious illnesses. Yet tobacco products are currently exempt from basic consumer protections like ingredient disclosure, product testing and marketing restrictions to children. Tobacco products are the only products on the market that kill a third of their customers if they are used as directed. In spite of the risks, in spite of the costs, tobacco products are the most unregulated consumer products available today.

This bill will ensure that the tobacco industry is finally required to tell us what is in the products they sell.

This legislation will also give the Food and Drug Administration the authority to require stronger warning labels, prevent industry misrepresentations, and regulate “reduced harm” claims about tobacco products. According to a 2006 Harvard School of Public Health study, the average amount of nicotine in cigarettes rose 11.8 percent from 1997 to 2005. More important, this bill will give the FDA the authority to ban the most harmful chemicals used in these products, or even reduce the amount of nicotine. The Family Smoking Prevention and Tobacco Control Act is not about unfairly punishing tobacco companies or consumers of tobacco products; it merely gives the Food and Drug Administration the right to regulate tobacco products as it regulates other products to safeguard the public health.

This Congress and the President have committed to reducing health care costs through comprehensive reform. This legislation is precisely the kind of investment in prevention and wellness that will enable us to increase access to quality health care while reducing costs. Tobacco use results in \$96 billion in annual health care costs and California alone will spend \$9.1 billion on smoking related health care costs—imagine if we spent those funds on preventative medicine or wellness measures.

The passage of this bipartisan bill would be one of the single, greatest public health protections that affirms our commitment to prevention and wellness as the foundation of responsible health care in our country. I urge my colleagues to make an investment in the health of the American people and support this legislation.

Mr. HATCH. Madam President, I rise today to share my views on H.R. 1256, the Family Smoking Prevention and Tobacco Control Act of 2009.

First and foremost, I want to make it perfectly clear that I am deeply concerned about the dangers of smoking, particularly when it comes to children and teenagers. We must do everything we can to discourage our youth from using tobacco products; because once they start, it is very difficult to stop. Long term use of tobacco causes serious health conditions such as lung cancer, emphysema, or COPD—Chronic Obstructive Pulmonary Disease. There is no question that tobacco is a killer.

And not only does tobacco kill, it also results in a tremendous amount of unnecessary health care costs. Experts believe tobacco costs society billions of dollars each year. Even second-hand tobacco smoke harms those who do not smoke themselves but are merely around those who do.

Do I believe that tobacco should be regulated? Of course I do. But do I believe that the Food and Drug Administration is the appropriate agency to regulate tobacco? Absolutely not. Let me take a few minutes to explain why I feel so strongly about this issue.

The FDA’s core mission is to promote and protect public health. As a

member and former chairman of the Senate Health, Education, Labor and Pensions Committee, the committee with jurisdiction over the Food, Drug and Cosmetic Act, I feel very strongly that the FDA should have sufficient resources to do its current job before taking on new responsibilities. Over the years, I have worked hard to get the FDA the funding it needs to protect consumer health; approve new drugs, biologics and medical devices; and protect our Nation’s food supply.

For years, FDA scientists have pleaded with Congress to give the agency more resources. In fact, according to the Alliance for a Stronger FDA, the FDA’s budget is small—\$2.04 billion was appropriated for the agency and it collects nearly \$600 million in user fees. Eighty-three percent of the FDA’s costs are staff-related. The Alliance, whose membership includes three former Secretaries of Health and Human Services and six former FDA Commissioners, believes that the FDA’s appropriation must increase by about \$100 million per year just in order to stay even with increased costs—anything lower will result in decreased staff and programming. In addition, the Alliance believes that the FDA’s base has eroded even while it was given new responsibility and “operates in a world of increased globalization and scientific complexity.” To put it in perspective, the FDA receives less funding than its local school district. Montgomery County, MD, public schools received \$2.07 billion in fiscal year 2009; the FDA received \$2.04 billion in appropriated funds that same year.

Recently, we heard about peanut products tainted with salmonella. Hundreds of people became sick and nine people lost their lives. In 2008, consumers were sickened by salmonella in peppers and possibly tomatoes. Before that, it was spinach tainted with *E. coli* that was sold all across the United States.

Overall, the FDA has done good work on food safety, but it also needs more inspectors and more resources to conduct inspections. In fact, on March 14, President Obama stated that about 95 percent of the Nation’s 150,000 food processing plants and warehouses go uninspected each year.

Unfortunately, the FDA struggles with more than just food. On the pharmaceutical side, the FDA has had to deal with safety issue after safety issue. From the withdrawal of Vioxx, to new data about suicide and SSRI antidepressants, FDA has been working to match its performance to its mission. We all know that it still has a way to go.

If the FDA is given the responsibility of regulating tobacco products, it will require the agency to expand considerably. A completely new center, the Center for Tobacco Products, will be established within the FDA and new scientific experts will have to be hired for that new Center. These individ-

uals—epidemiologists, toxicologists and medical reviewers—could be working on evaluating cancer drugs, or new vaccines, or tracing outbreaks of food borne illness—areas where, quite frankly, they are desperately needed. Instead, they will be wasting time, effort, and money in attempt to make a deadly product slightly less deadly.

The former FDA commissioner, Dr. Andrew von Eschenbach, expressed serious concerns in 2007 that this bill does not provide enough funding for an expansion of the FDA and does not authorize appropriations for start-up costs. He also expressed concerns that regulating tobacco would jeopardize FDA’s public health mission. Dr. von Eschenbach was right—it makes no sense to expand this agency and divert its attention to tobacco products. I simply cannot understand why Congress is giving this agency any additional duties without a clear idea, in my opinion, about how much money it will cost to carry them out. Although this legislation is funded by tobacco company user fees, how do we know that enough money will be collected? And, while it is my understanding that the substitute big being considered by the Senate will require performance reports on these user fees every 3 years, I feel that these reports should be filed on an annual basis so that we in Congress may make necessary adjustments if the program is running out of money.

Another concern I have is the impact that these user fees could have on public health programs like the State Children’s Health Insurance Program—CHIP—which relies on tobacco taxes for its financing. For that reason, I filed an amendment calling for the Comptroller General of the Government Accountability Office to study whether this bill will have an impact on public health programs. It is my hope that this amendment will be accepted by my colleagues.

Finally, I want to talk in more detail about the mission of the FDA, which is to protect public health. I feel that by requiring the FDA to regulate tobacco, we are putting the agency in direct conflict of this important mission. Here are two undeniable truths about tobacco: (1) tobacco is known to cause serious illnesses and death, and (2) tobacco does not have any health benefits whatsoever. So, I ask you, what sense does it make to have the FDA regulate tobacco? How does an agency in charge of protecting public health regulate tobacco, a product that is inherently unsafe?

In fact, when the bill was being considered by the Senate HELP Committee a few weeks ago, I cosponsored and strongly supported Senator ENZI’s amendment to have the Centers for Disease Control and Prevention regulate tobacco products. Unlike the FDA, the CDC has the infrastructure, personnel and mission to take on tobacco. The CDC operates programs that reduce the health and economic consequences of the leading causes of

death and disability, thereby ensuring a long, productive, healthy life for all people. For those reasons, I felt that the CDC's mission was far more suited to the regulation of tobacco. Unfortunately, that amendment was not approved by HELP Committee members and, as a result, the Senate is now considering a bill that would designate the FDA as the regulator of tobacco products.

In conclusion, I am probably one of the FDA's strongest supporters in Congress. Back in the 1990s, I introduced legislation that created the White Oak campus; the unified FDA campus which I envisioned would bring prestige back to the agency. This campus is on track to be completed in 2012. I wanted FDA to be able to attract the brightest minds so we could get the best researchers in the country working together in order to ensure the safety of our drugs, medical devices and food supply. Dr. Margaret Hamburg, the newly confirmed FDA Commissioner has impressed me with her strong vision for the future of the FDA. It is my hope that by adding the regulation of tobacco to the FDA's portfolio, that vision does not go off course.

I want to make one thing perfectly clear—I support the intent of this bill which is to stop our young people from picking up that first cigarette and to protect public health by regulating tobacco. That being said, it is my hope that some of the concerns that I have raised will be carefully considered and addressed before this legislation is signed into law.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Delaware.

PRAISE OF DR. DOUGLAS LOWY AND DR. JOHN SCHILLER

Mr. KAUFMAN. Madam President, I would like to continue what I began last month by honoring the contribution of our Federal employees.

On May 4, I came to the floor to discuss the importance of recognizing the hard work and dedicated service of our Federal employees. This is especially important because of our recovery efforts during these challenging economic times. The programs we enact, it is easy to say, will be carried out by a Federal workforce that requires people's confidence. I know from personal experience how industrious and trustworthy civil servants are. The public needs to know too.

As I said then, we also need to encourage more of our graduates to enter careers in public service. America is blessed with so many enthusiastic and

entrepreneurial citizens. We need them to lend their talents. We need their ideas, their creative minds. This is why I have made it a priority to honor excellent public servants and call attention to what Federal employees can and do accomplish.

In my previous remarks, I promised to highlight some of our excellent public servants from this desk every so often. In keeping with my promise, I rise to speak about two Federal employees whose achievements are particularly relevant to our work in this session: the current state of our health care system.

As many know, cervical cancer is the second most common cause of cancer deaths in women worldwide. It takes the lives of almost a quarter million women each year. Here in America, nearly 11,000 women are diagnosed annually.

What distinguishes cervical cancer from most other cancers is its cause. While many cancers are linked to a genetic predisposition for abnormal cell growth, nearly all cases of cervical cancer result from viral infections. The majority of these infections come from exposure to the human papillomavirus or HPV. HPV is the most common sexually transmitted disease affecting Americans.

When Dr. Douglas Lowy and Dr. John Schiller began studying HPV, little did they know that their 20-year partnership as researchers would lead to the development of a vaccine.

Working at the National Institutes of Health's National Cancer Institute Center for Cancer Research, the two discovered that previous attempts at creating a vaccine had failed because a genetic mutation existed in the virus, making it difficult for the body to produce antibodies against it.

Once Drs. Lowy and Schiller made this finding, they worked to create a modified version of the HPV without the mutation. This development is instrumental in the creation a few years ago of a vaccine that will prevent the vast majority of cervical cancer cases from developing.

Because over 80 percent of those who develop cervical cancer cases live in developing nations, Drs. Lowy and Schiller have been working with the World Health Organization to make the HPV vaccine available to women around the world.

In recognition of their achievement, the two men jointly were awarded the 2007 Service to America Federal Employee of the Year Medal.

Today, women and girls age 9 through 26 have the ability to be vaccinated against developing cervical cancer.

Once again, I call on my fellow Senators to join me in honoring Dr. Lowy and Dr. Schiller and all Federal employees who have distinguished themselves in their service of our Nation.

HEALTH CARE REFORM

Mr. KAUFMAN. Madam President, I would like to speak on reforming our

health care system. Simply put, health care reform has been delayed for far too long, and it cannot wait any longer. Most Americans are satisfied with the health care they receive today.

Let me repeat this. Most Americans are satisfied with the health care they receive today. But if we want to sustain and improve the quality of health care, we need to act now.

What they are concerned about is what future health care is going to be about, and they are also concerned about the cost of health care. We must get health care costs under control while preserving choice.

If we do nothing and allow the status quo to persist, it has been estimated that the share of gross domestic product devoted to health care will rise from 18 percent in 2009 to 28 percent in 2030.

If health care premiums continue to rise at 4 percent per year, which is actually less than the historical average, then by 2025, premiums for family coverage will reach \$25,200 a year—over \$2,000 a month. This trajectory is simply unsustainable.

We have attempted to reform our health care system several times in the past to no avail. But this year is different and has to be different. This time the call for reform is coming from people and organizations that previously opposed reform. This time businesses, along with unions that represent their workers, are asking for reform.

Businesses in America have to compete against companies from other countries. Many of them do not pay anything for health care for their workers or retirees. Others pay far less than what many of our larger corporations pay. This puts many of our businesses at a disadvantage in the global marketplace.

In addition, people in my home State of Delaware and Americans across the Nation are struggling to keep up with the crushing and seemingly constant increase in the cost of health care.

Over the last decade, Americans have watched as their health insurance premiums and deductibles have risen at much faster rates than their wages, threatening their financial stability. It also puts them at risk for losing their insurance as employers struggle to provide adequate health care coverage.

Americans rightfully value their relations with their doctor and the care they receive. We must—and I say must—preserve these relationships. In addition, as costs rise and insurance benefits erode, Americans are also asking to protect what works and fixes what is broken.

Our current health care system—the status quo—is rampant with bureaucracy, inefficiency, and waste. It is time for reform. It is time to reform health care for Americans so everyone has access to quality, affordable care, regardless of preexisting medical conditions. It is time to reform health care so we

place a higher priority on prevention and wellness, saving lives as well as money. It is time to reform health care so all Americans can compare the costs and benefits of different health care policies. It is time to reform health care so Americans have more choices, not less, and can choose their own doctor.

I applaud the members of the Finance Committee and the Health, Education, Labor, and Pensions Committee in the Senate, as well as our counterparts in the House, for their sincere dedication, their thoroughness, and their commitment to crafting legislation that truly will transform the health care system in this country.

It is clear this is not an easy task and is one that will require true compromise from everyone across the ideological spectrum, but it is a task that must be done. Our country and the health of its citizens, as well as the economy, cannot afford to maintain the status quo.

As the members of these committees gather to discuss and ultimately mark up legislation, I encourage them to include a viable public option in a menu of insurance options from which Americans may choose. It will be—and let me stress this—it would be a purely voluntary option.

If you like your current plan, you keep it. But a public health insurance option is critical to ensure the greatest amount of choice possible for consumers. There are too many Americans who do not have real choices when it comes to health insurance, especially those who live in rural areas.

In addition, many large urban areas are dominated by one or two insurers that serve more than 60 percent of the market. In fact, there are seven States where one insurer has over 75 percent of the market share.

A public option can help Americans expand their choice of insurance provider. A public option could take various forms, and I think the committees are the proper place to determine the appropriate contours of a public option.

I think a good starting point for discussion is the proposal put forward by my colleague from New York, Senator SCHUMER. It delivers all the benefits of increased competition without relying on unfair, built-in advantages for the federally backed option.

This public option would not be subsidized by the government or partnered with Medicare. It would not be supported by tax revenue. It would compete on a level playing field with the private insurance industry. If a level playing field exists, then private insurers will have to compete based on quality of care and pricing, instead of just competing for the healthiest consumers.

This is just one proposal for public option. There are others we can debate as we move forward.

Right now, more than 30 State governments offer their employees a

choice between traditional private insurance and a plan that is self-insured by the State. Some of them have had them for more than 15 years.

In these States, the market share of the self-funded plans within the market for State employees typically ranges from 25 to 40 percent. This shows a healthy competition between the public option and private insurers, not domination by either type of insurer. The States provide these options because they believe it adds value to competitive offerings they give their workers.

These arrangements do not seem to be a problem or incite ideological issues at the State level. Why should it be so when discussing health reform on the national level?

A public option can go a long way in introducing quality advancements and innovation that many private insurers do not now have the incentive to implement.

Medicare and the veterans health system have spearheaded important innovations in the past, including payment methods, quality of care initiatives, and information technology advancements.

A new public option could also help lead the way in bringing more innovation to the delivery system and introducing new measures to reduce costs and improve quality.

A public option can serve as a benchmark for all insurers, setting a standard for cost, quality, and access within regional or national marketplaces. It can have low administrative costs and can have a broad choice of providers.

Simply put, Americans should have a choice of a public health insurance option operating alongside private plans.

A public option will give Americans a better range of choices, make the health care market more competitive, and keep insurance companies honest.

The key to all this, however, is that a public option will be just that, as I said—an option, not a mandate.

Some people will choose it; others will not. If you like the insurance plan you have now, you keep it. If you are happy with the insurance you get with your employer, or even the individual insurance market, you stay enrolled in that insurance plan. And if you are unsatisfied with the public option, you have the option to switch back to private insurers.

Americans firmly support the ability to choose their own doctor and value their relationships with their providers. So do I.

An overriding goal of health reform is to increase patients' access to affordable, quality health care, and offering a public option can help increase Americans' choices.

I am heartened that I was joined by 26 other Senators several weeks ago in cosponsoring a resolution introduced by Senator BROWN calling for the inclusion of a federally backed health insurance option in health care reform.

Senators who have been involved in health care issues for decades—Sen-

ators KENNEDY, DODD, ROCKEFELLER, HARKIN, BINGAMAN, and INOUE, just to name a few—have all agreed that a public option should be included.

As I said before, I admire the efforts of my colleagues on the Finance and Health, Education, Labor and Pensions Committees who will be drafting our health reform legislation.

They have an important responsibility, and I recognize that they will be debating many options regarding coverage, financing, regulations, and so on.

I simply encourage them to consider seriously a public option as a choice for Americans in any new health insurance exchange.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

HEALTH CARE REFORM

Mr. SANDERS. Mr. President, I think the American people are aware that our country is in the midst of a major health care crisis. That is not a secret to anybody. Forty-six million Americans have no health insurance and, importantly, even more are underinsured, with high deductibles and copayments. Further, some 60 million Americans, including many with health insurance, do not have access to a medical home of their own. In fact, according to the Institute of Medicine, some 18,000 Americans die each year from preventable diseases because they lack health insurance and do not get to a doctor when they should.

I can recall very vividly talking to several physicians in Vermont who told me how people walked into their office, quite sick, and when they asked why they hadn't come in earlier, they said: Well, we don't have a lot of money; we didn't have any health insurance. The result is that those patients died. That happens every single day in this great country.

When we talk about health care, we have to understand that access to dental care is even worse. On top of that, in our Nation, we pay the highest prices in the world for prescription drugs. My State of Vermont borders on Canada, and it is not uncommon for people to go from Vermont to Canada to buy the prescription drugs they need at far lower cost than in America.

In the midst of all of this—the 46 million Americans without health insurance, people being underinsured, and people paying outrageously high prices for prescription drugs—at the end of the day, our Nation pays far more for health care per person than any other country on Earth. Far more. It is not even close. Yet despite the enormous

sum of money we spend, our health care outcomes—what we get for what we spend—lag behind many other countries in terms of life expectancy—how long our people live, in terms of infant mortality, and other health indices.

According to a recent report from the National Center for Health Statistics—this is just one example—the United States ranks 29th in infant mortality in the world—29th in the world. We are tied with Poland and Slovakia for 29th in the world in terms of infant mortality. In all due respect to our friends in Poland and Slovakia, we should be doing a lot better than that because we spend a lot more on health care than they do in Poland and Slovakia.

Further, according to a study published in the London School of Hygiene and Tropical Medicine, the United States has the highest rate of preventable deaths among 19 industrialized nations. Although our rate has declined over the past 5 years, it is doing so at a slower rate than other countries. According to that study, if the rate of preventable deaths in the United States improved to the average of the top three countries, which are France, Japan, and Australia, approximately 100,000 fewer residents of the United States would die annually.

When we talk about health care, we are not just talking about individuals who suffer and die because they do not have health care. What we are talking about is that the high cost of health care—as President Obama makes clear all of the time—is a major economic issue as well. In our country today, we are now spending about 16 percent of our GNP on health care, and the cost of health care is continuing to rise at a very high rate, which becomes economically unsustainable. The fact is, General Motors, which recently declared bankruptcy, spends more money on health care per automobile than they do on steel, and that creates an economic climate in which America—our companies—becomes noncompetitive with other countries around the world. But it is not just large corporations such as GM. Small business owners in Vermont and throughout this country are finding it harder and harder not only to provide health care for their workers but even for themselves.

In addition, a recent study found that medical problems contributed to 62 percent of all bankruptcies in 2007 and that between 2001 and 2007, the proportion of all bankruptcies attributable to medical problems rose by nearly 50 percent. Interestingly, 78 percent of those who experienced bankruptcy as a result of illness were insured. They were insured. These are not people who did not have any health insurance. But it speaks to the inadequacy and the lack of coverage, comprehensive coverage, in many health insurance programs.

We as a Congress, for whatever reason—and I will suggest the reason in a moment—do not really spend a lot of time discussing why the American

health care system is so expensive, why it is so inefficient, why it is so complicated. We do not talk about that very much. I fear that has a lot to do with the role private health insurance plays over the political process in this country. Let me be very clear. In my view, the evidence is overwhelming that the function of a private health insurance company is not to provide health care. The function of a private health insurance company is to make as much money as it possibly can. The truth is, the more health care a private health insurance company denies people, the more money it makes. If you submit a claim for coverage and they deny it, from their perspective that is a very good thing because they make more money.

Further, in pursuit of making as much money as they can, private health insurance companies have created a patchwork system which is the most complicated, the most bureaucratic, and the most wasteful in the world. According to a number of studies, we are wasting about \$400 billion a year in administrative costs, in profiteering, and in bureaucratic billing practices. That is enough money to provide health care to all of the uninsured.

I know that is not an issue we are supposed to be talking about here on the floor of the Senate because we are not supposed to take on the insurance companies or the drug companies because of all of their power. But I believe, if we are serious about moving toward a universal, comprehensive, cost-effective health care system in this country, we have to talk about the very negative role private health insurance companies are playing in that process.

Administrative costs for insurers, employers, and the providers of health care in the United States are about one out of every four health care dollars we spend. In other words, for every \$1 we spend, one quarter of that dollar does not go to doctors, does not go to nurses, does not go to medicine, does not go to therapies; it goes to administration. That is at the root of the problem we have in terms of health care costs in America. In California—one example—only 66 percent of total insurance premiums are used to cover hospital and physician services. One-third, \$1 out of every \$3, is spent on administration, billing, claims processing, sales and marketing, finance and underwriting.

The American people want their health care dollars spent on health care. I know that is a radical idea, but when people spend money on health care, they assume it goes to the provision of health care, not profiteering, not administration, not hiring more bureaucrats to tell us we are not covered when we thought we were covered. What the American people want is close to 100 percent of that dollar to go to health care and not bureaucracy.

While health care costs in America have soared, as everybody knows, from

2003 to 2007 the combined profits of the Nation's major health insurance companies increased by 170 percent. Health care costs are soaring, profits of the major health insurance companies have gone up by 170 percent from 2003 to 2007, and CEO compensation for the top seven health insurance companies averaged over \$14 million per CEO. To add insult to injury, some of these health care profits are going directly into campaign contributions and into lobbying to make sure, in fact, the Congress does not move forward toward real health care reform, which, in my view, means a single-payer health care system.

That is where we are right now. We have the most inefficient, wasteful, bureaucratic system of any major country on Earth. Our health care outcomes, despite all the money we spend, are way below many other countries in the world. And we are not discussing the most important issue with regard to health care spending; that is, the role private health insurance companies are playing.

We are now in the beginning of the debate on health care. I am going to do my best to make sure that issue of the role private health insurance companies are playing in the system, the very negative role they are playing, is something that, in fact, we talk about.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I commend my friend, the junior Senator from Vermont, for his words, this critique about the health insurance system—what is right about it and what is wrong with it. We know, for those with insurance, we can get good medical care in this country. We know many people do not have any insurance. We know many others have inadequate insurance. And we know that so many Americans are in a situation where they are anxious about the future of their health and the quality of health care they have. Too many Americans have seen their health care premiums go up, their deductibles go up, and their copays go up. They end up with a private insurance company that finds ways to delay paying them, to in many cases not reimburse them at all for their health care expenses. It is insurance that does not really deliver, and that is really no insurance at all.

What Senator SANDERS said is exactly right. The behavior of health insurance companies has meant we have huge administrative costs.

More and more, we remember what the President of the United States said when he was a candidate for President. Senator SANDERS mentioned that story at the White House the other day to President Obama, how moved people in this country were when they heard the President talk about his own mother who was dying, who was fighting with insurance companies over paying for her cancer treatment while she was dying. She had to advocate for herself.

Her son was advocating for her, of course, too. But she went through the trauma and pain of cancer and the trauma and pain of dealing with insurance companies. We know that. Yet some in this body want to increase the role of private insurance and allow them to continue to game the system.

We also know that private insurance companies in many ways are simply a step ahead of the sheriff. They do not mind insuring someone who is 50 and healthy, but they would rather not insure someone who is 63 and unhealthy because they can make more money on someone who is healthy, but in somebody who has a preexisting condition, they will find a way not to insure them or not to pay off to them when they get sick. We know about the inefficiencies in the health care system, in private insurance. We know the difficulties with private insurance, the bureaucracy, and we know about the administrative costs of private insurance.

Private insurance administrative costs run anywhere from 15 percent to 30 percent, depending on whether you are in a big group plan, a smaller group plan, or an individual plan. We also know Medicare, which has delivered for 44 years—it was signed by President Johnson in July of 1965—we know Medicare has delivered very well in the great majority of cases for the American people, for the elderly, but we also know Medicare has about a 2-percent or 3-percent administrative cost—again, contrasted with 15 to 30 percent with private insurance companies.

We also know, interestingly, there is a statistic—there was a study several years ago of the richest industrial democracies—France, Germany, Japan, Israel, England, Spain, Italy, Canada, and the United States—and they rated all these countries according to several health care indices: life expectancy, infant mortality, maternal mortality, inoculation rates for children, all those things. Of the 13 countries they looked at, the United States ranked 12th. Even though we spent twice as much as any other country on Earth per capita, our outcomes were not as good. We were 12th out of 13. In one category, America ranked near the top, and that is life expectancy at 65.

If you get to be 65 in this country, the chances are you are going to live a longer, healthier life than almost any other country in the world. Why? Because we have a health care system, Medicare, that provides health insurance for everybody over 65. There are holes and gaps in coverage in Medicare; the premiums can be pretty hard for some to reach; the copay and deductibles can be a problem.

Overall people know when they have Medicare they are pretty darned well taken care of. That is not the case for people under 65. I came to the floor tonight for a few more moments, as I was listening to Senator SANDERS talk so eloquently, to share a couple stories.

Sherry, in Albany, OH, is not Medicare eligible. She is forced to consider borrowing from the equity in her home to pay her \$1,070 premium through

COBRA. She had a job. She lost her job. She has to pay the employer and employee side to pay for her health insurance. That is the way COBRA works. It is a good program but a bit of a cruel hoax. If you lose your job, it is pretty hard to pay your premium and your employer's premium at the same time.

She is considering borrowing against her house to pay for her health insurance for COBRA for 18 months. She will get a little bit of help now, because in the stimulus package, we took care of some of that. She has to find a way until she is 65 to cobble together insurance.

Terry, a small business owner nearby in Columbus, expects to pay 35 percent more this year to cover his employees. He wants to cover his employees, but he has a 30-percent increase. What is he supposed to do, especially when his business—I don't know a lot about his business, but so many small businesses are squeezed more and more because of the economy. So we know these stories, and that is why it is so important that we address health care reform this year.

We want to do several things. First of all, anybody who is in a health care plan they are happy with, they are satisfied with now, they can stay in that plan. If they want to make that choice, they stay in the plan. Second, we need to do something on costs, to stop the huge increase in premiums, copays, deductibles. We have to do a better job to constrain costs in the health care plan than this government or the private sector has been able to do for decades.

Third, we need to give people full choice. That means they can stay in their plan, as I mentioned earlier, No. 1, but they also will have a choice of private insurance plans and a public plan, a public option. So they can choose a private plan with Aetna or a private plan with United Health or a private plan with BlueCross BlueShield or they can decide to join a public plan, a public plan that might look similar to Medicare, which they can decide, perhaps they would save money or have better preventive care or a plan with lower copays or deductibles.

They can make the choice. A great majority of the Democratic caucus, and I hope Republicans will join us, an overwhelming sector wants that option, a public plan and a private plan they can choose, that might be similar to Medicare.

Anything we tried in health care, every time that health care reform was introduced, the cries of "government takeover" and "socialized medicine" were heard from by conservatives who do not think government should have a role in health care.

We are the only country in the world that thinks that, it seems like, because every other country has a major part of their health care plan, a major part is involved with the government, if not the whole plan.

We are not asking for a government takeover, we are not doing socialized

medicine. That is what they always say. We heard it in 1948, when Harry Truman tried to push through Medicare. We heard it in 1965, when Lyndon Johnson and the overwhelmingly Democratic House and Senate passed the Medicare law. We heard it in 1993, my first term in the House, Senator SANDERS' second term in the House. And that is what insurers are claiming today. They are saying: Government takeover of medicine. That is not true. We want a government option plan. We want the government to provide a Medicare plan that people can choose from. You can choose a private plan or public plan.

Americans deserve no less. Our country can afford no less. The President asked us to move on this as quickly as we can and to do it right. This is our chance, and I think we are going to do it.

Mr. SANDERS. Would the Senator from Ohio yield?

Mr. BROWN. Yes.

Mr. SANDERS. I wish to thank him for his cogent remarks, talking about one of the most basic issues facing this country and that is health care. We are on the Veterans' Committee as well, and I know you spend a lot of time talking to veterans in Ohio. Has the Senator heard a veteran in Ohio tell you they want to privatize the VA?

Mr. BROWN. I have heard mostly conservative Republicans say they want to privatize the VA.

Mr. SANDERS. Every time that issue is raised, the veterans say no.

Mr. BROWN. One of the things we noticed about the Veterans' Administration is that the VA has found a way to buy, at the lowest cost possible, some of the least-expensive but good-quality prescription drugs. Because what the VA does—there are millions of veterans—they negotiate on behalf of veterans with individual drug companies for individual prescription drugs, individual pharmaceuticals, and they get a rate at about one-half of what you would pay if you went to Drug Mart or Rite Aid or any of the other stores.

The Medicare bill, when it came through the House and Senate—President Bush pushed that bill—they did not allow us to negotiate drug prices. We know what this is about. We know if we follow the lead of the drug industry and the insurance industry, which this Congress did through most of the first part of this decade with President Bush, we end up with special interest laws that protect the drug companies or insurance companies.

Or we can now pass health care with a public option plan, give the public the option of going to a Medicare-like plan instead of a private insurance company plan, if they want to, or stay in the plan they are in and then they decide on what kind of care they would like.

Mr. SANDERS. My friend from Ohio is exactly right. If you talk to the people of this country, if you talk to the veterans and say: Do you want VA

health care to be privatized? Overwhelmingly, no.

In recent years, the Senator from Ohio, I, and others, have worked to substantially increase funding for federally qualified community health care centers all over this country. These are the most cost-effective ways of providing quality health care, dental care, low-cost prescription drugs, mental health counseling.

The people of this country want those. I hope we have success in expanding that program. But I get a little bit tired of hearing from some of our friends on the other side who tell us: Oh, people do not want government involved in health care. Well, you tell that to seniors. Tell them you want to privatize Medicare. Tell that to the veterans, that you want to privatize the VA.

The fact is, as the Senator from Ohio indicated, we are wasting tens and tens of billions of dollars every year in bureaucracy, in billing, in excessive CEO salaries through private health insurance companies. At the very least, the people of this country are demanding, and we must bring forth, a strong—underline “strong”—public option within any health care reform program we develop.

Mr. BROWN. I thank the Senator from Vermont. It is pretty clear, and I think this Congress is going to do the right thing. The President, when he met with us last week, as he promised in his campaign, was strongly in favor of purchasing insurance from the Medicare look-alike plan or private plans or either one or keeping what they already have.

The President has spoken strongly on it for months. The majority of this Congress wants to do the same. I am hopeful that is what we will do in the months ahead.

HONORING OUR ARMED FORCES

SERGEANT JUSTIN DUFFY

Mr. NELSON of Nebraska. Mr. President, I rise today to honor Army SGT Justin J. Duffy, age 31, who was killed in Iraq on June 2, 2009.

Sergeant Duffy was born in Moline, IL. As a child, his family moved to Cozad, NE, where he graduated from high school in 1995. He earned a degree in criminal justice from the University of Nebraska-Kearney. Duffy worked at Eaton Corporation for 5 years, where he was recognized for his work ethic and leadership ability and promoted to a supervisor position. His colleagues and friends said Duffy was the kind of person who never missed a day on the job and was always on time and ready to work. This young man stood out among his peers and always sought a challenge, so it came as no surprise to his friends and family when he decided to join the Army, enlisting in May 2008.

Sergeant Duffy's father Joe said the U.S. Army had attracted his son because he wanted adventure and needed more of a challenge and he believed

that desire would be fulfilled by serving in the military. His time with the U.S. Army was marked by success; one of his proudest accomplishments was his quick rise to Sergeant, beating the standard time it normally takes to achieve that rank. Sergeant Duffy was assigned to the 3rd Brigade Combat Team, 82nd Airborne Division. While in Iraq, Sergeant Duffy's team was responsible for escort security for high-ranking military leadership.

Sergeant Duffy passed away in eastern Baghdad after an improvised explosive device detonated near the humvee he was driving; three of his fellow soldiers were also wounded in the blast. Sergeant Duffy served his country honorably and made the ultimate sacrifice for his fellow Americans. His life and service represents an example we should all strive to emulate.

SGT Justin Duffy leaves behind his parents Joe and Janet Duffy of Cozad, NE; his grandfather LeRoy Hood of Moline, IL; and two sisters Jenny of Grand Island, NE, and Jackie of Yuma, AZ. He will forever be remembered by his family and friends as the kind of person who was quick to jump in wherever he was needed; some even labeled him a shepherd, as he always looked out for family, friends, and even strangers. I join all Nebraskans today in mourning the loss of Sergeant Duffy and offering our deepest condolences to his family.

SPECIALIST JEREMY R. GULLETT

Mr. BUNNING. Mr. President, I would like to invite my colleagues to join me in recognizing Greenup County, KY, for paying tribute to Army SPC Jeremy R. Gullett.

SPC Jeremy R. Gullett served in the 4th Battalion, 320th Field Artillery Regiment of the 101st Airborne Division based out of Fort Campbell. He lost his life in the line of duty on May 7, 2008, in the Sabari District of Afghanistan.

This evening Greenup County will have a dedication ceremony to name a local bridge after Specialist Gullett, honoring his life and service to our Nation. The bridge will serve as a reminder to all of those who live or travel through Greenup County of the sacrifice Specialist Gullett made for our freedom.

A member of the Greenup County High School Class of 2003, Specialist Gullett participated in his high school's Junior ROTC program and joined our Nation's Armed Forces soon after earning his diploma. In addition to serving under our Nation's armed services, Specialist Gullett was a member of Little Sandy Volunteer Fire Department and Veterans of Foreign Wars, dedicating his life to service domestically and internationally.

Specialist Gullett's sacrifice for our Nation will forever be a reminder that freedom comes at a high cost. We should never take for granted the sacrifice that men and women make daily in all branches of the Armed Forces.

As we commemorate the life and service of SPC Jeremy Gullett, my

thoughts and prayers are with his friends and family. All Kentuckians and Americans are deeply indebted to Specialist Gullett.

DECEPTIVE MARKETING

Mr. LEVIN. Mr. President, last month the Senate passed and the President signed H. R. 627, the Credit CARD Act of 2009. Thanks to the hard work of Senator DODD, Senator SHELBY, Representative MALONEY, many other Members of Congress, and the multitude of fed-up citizens who protested unfair treatment by credit card companies, this landmark bill to protect consumers from abusive credit card practices was passed over the objections of powerful lobbies. Millions of Americans will benefit now that some balance of power is being restored between card holders and card issuers.

Today, I want to thank Senator DODD and Senator SHELBY for including in the Credit CARD Act a provision that I authored and that was cosponsored by Senator COLLINS and Senator MENENDEZ, to stop the deceptive marketing of free credit reports. I would also like to thank Senator PRYOR for working with me to address his concerns about the provision.

Credit reports are a record of an individual's history of receiving and repaying loans, and they frequently contain errors. At the same time, these credit reports are used to calculate the credit scores that have become so central to evaluating a person's creditworthiness. Credit scores are used to determine whether someone will qualify for a credit card, what interest rate they will get, and whether and when that rate will increase. Credit scores perform a similar function for home mortgages, car loans, and consumer lines of credit. Some companies use these scores to screen applicants for apartments, insurance, security clearances, and even jobs. The important role a credit score plays in our everyday lives makes it all the more critical that the reports used to calculate these scores are accurate and accessible to consumers.

In the United States, three large nationwide credit reporting companies, often called “credit bureaus,” compile and maintain credit reports for the vast majority of consumers. Until Congress passed the Fair and Accurate Credit Transactions, FACT, Act of 2003, consumers had to pay a fee in order to access or attempt to correct the information in their credit reports.

The FACT Act gave consumers the right to a free annual report from each of the nationwide consumer reporting companies. The FTC mandated the establishment of a website, AnnualCreditReport.com, to provide consumers access to their federally mandated free credit reports. In these difficult economic times, it is critical that consumers have a clear understanding of their right to get a free annual report, an easy way to obtain

those reports, and the ability to correct any mistakes since mistakes in a credit report could cost someone a loan or a job.

Today, however, television, radio, and the internet are awash in misleading advertisements for free credit reports. A cottage industry has sprung up of unscrupulous marketers who confuse or deceive consumers into buying products or services they may not need or want by tying the purchases to the offer of a so-called “free credit report.” Many of these marketers deliberately obscure the difference between the free reports to which consumers have a right under Federal law—which come with no strings attached—and the “free reports” that marketers condition on purchases of credit monitoring, credit scores, or other products.

Deceptive advertisements direct consumers to contact commercial sources unaffiliated with the government-authorized AnnualCreditReport.com. Consumers who request “free” credit reports from these sources often find they have unwittingly signed up for credit monitoring or other services they must pay for. Some of these offers include notice that they are not affiliated with the federally mandated free report, and that consumers who accept the offer will either have to pay for another product or cancel a “trial membership” within a short time to avoid being charged. These disclaimers, however, are often buried in fine print or appear in places where most consumers won’t see them. They simply are not adequate to correct the overall impression that the offer is for the free, no-strings-attached credit report available under federal law. Deceptive advertisements using free credit reports as bait are particularly destructive, because they take advantage of a consumer’s general knowledge that free credit reports are available under law, and subvert the law’s intent to protect consumers.

The FTC has received hundreds of complaints from consumers who have been confused or deceived into paying for what they thought was their free report provided by law. The Better Business Bureau reports that just one prominent advertiser of free credit reports, FreeCreditReport.com, has been the subject of more than 9,600 complaints over the last 36 months. FreeCreditReport.com requires a potential customer to provide a credit card number in order to establish an account and request a credit report. Many consumers assume this information is necessary for the company to identify the correct credit file, because why else would you have to provide a valid credit card to receive a free report? In fact, buried in the small print it is revealed that customers that request a free credit report must also opt out of a credit monitoring service or else they will be charged \$15 a month, indefinitely.

A 2007 study by Robert Mayer and Tyler Barrick of the University of Utah

for Consumer Reports WebWatch analyzed 24 websites that market free credit reports and scores and revealed them to be rife with deceptive practices. Many of the websites studied had the word “free” in the domain name; others had names similar to the FTC-mandated AnnualCreditReport.com, such as NationalCreditReport.com. Of the 58 sales pitches for credit reports or scores across the 24 websites analyzed, 41 pitches were for “free” reports or scores that in fact required purchase of a product or enrollment in a credit monitoring service. The study concluded that the “enticement of free credit reports and free credit scores is an integral part of marketing credit-related services.” Interestingly, the study also revealed that of the 24 websites analyzed, nine were owned by, or closely connected to, the nationwide bureau TransUnion, and eight were owned by or closely connected to the nationwide credit bureau Experian.

The Federal Trade Commission has sued companies engaged in such misleading practices, but the deceptive advertisements have not stopped. Since 2005, for example, Experian has paid the government more than \$1.2 million in settlements over deceptive marketing of ostensibly free credit reports through the website FreeCreditReport.com. And yet FreeCreditReport.com, through its seemingly ubiquitous advertisements, continues to deceptively peddle its product. At this very moment the Florida Attorney General’s office has an active investigation into FreeCreditReport.com for “Failure to adequately disclose negative option enrollment in credit monitoring with ‘Free’ credit report, deceptive advertising, misleading domain name, and failure to honor cancellations.”

Section 205 of the Credit CARD Act, which contains the Levin-Collins-Menendez provision, will shore up the consumer protection in the FACT Act by requiring simple, honest disclosure in advertisements for “free” credit reports. Mandatory disclosures will help ensure that consumers are given accurate information about how to obtain a free credit report with no strings attached. It is an effort to end the deceptive activities of companies that attempt to trick people into buying something that they are entitled by Federal law to receive for free.

Section 205 directs the Federal Trade Commission to issue a rule by February 2010, to require companies advertising free credit reports to disclose the availability of the government-mandated free credit report in all mediums—internet, television, radio and print. Under the statute, the rulemaking must require that all television and radio ads for free credit reports include the disclaimer that “This is not the free credit report provided for by federal law.” The rulemaking will also require that all internet advertisers of free credit reports prominently display on the advertiser’s

homepage and possibly the advertisement itself that consumers can order the free credit reports provided for by federal law from www.AnnualCreditReport.com.

Section 205 provides for FTC rulemaking to flesh out the disclosure requirements, such as what information should be provided, how it should be formatted, and where it should be displayed. This section will not achieve its purpose unless the mandated disclosure is made in a clear, prominent, and effective manner, a standard that disclosures in many current promotions do not achieve. The cleverly deemphasized disclosure currently on FreeCreditReport.com, for example, would not be sufficient.

The success of a disclosure in alleviating confusion and deception depends critically on the manner in which it is presented. Even seemingly minor differences in language or presentation can make the difference between effective and ineffective disclosures. Section 205 recognizes these challenges and the FTC’s unique ability to meet them by giving the agency the authority to implement this new disclosure requirement by rule. I encourage the FTC to use consumer testing to identify the most effective disclosures and to design separate disclosure requirements for each type of medium: television, radio, internet, and print.

Section 205 (b)(2)(B) states that, “for advertisements on the Internet,” the FTC rulemaking shall determine “whether the disclosure required under section 612(g)(1) of the Fair Credit Reporting Act (as added by this section) shall appear on the advertisement or the website on which the free credit report is made available.” I want to be perfectly clear, as the Senator who authored this provision and ensured its inclusion in the final bill, that this provision is intended to allow the FTC to require disclosure on an internet ad, on the website to which the ad is linked, on the “home” website of the company advertising “free” credit reports, or on any combination of the three. In my view, most forms of internet advertising, such as banner ads and paid search engine links promising free credit reports, should include disclosures. It will be up to the FTC to determine the nature and extent of the disclosure on each form of internet advertising.

The goal of section 205 is to eliminate consumer confusion and deception by preventing commercial promotions from posing as the Federal free annual report program, and by ensuring that consumers know how to get their truly free annual reports. Although this provision does not prohibit the marketing of “free credit reports” per se, nothing in this section is intended to limit the FTC’s authority under Section 5 of the FTC Act to prohibit unfair or deceptive practices in or affecting commerce, or its authority under the FACT Act to promulgate regulations regarding the

centralized source for free credit reports. In fact, I hope the FTC utilizes all of its authority to end the deceptive marketing of free credit reports.

Today, deceptive marketing of “free” credit reports is big business. Ads appear on television, the internet, and other media. One of the leading advertisers of ostensibly free credit reports that are, in fact, linked to paid services is Experian, which vigorously opposed the disclosure requirements in Section 205. Despite its best efforts to sugarcoat its marketing practices, Experian acknowledged that if it were required in its advertising to inform potential customers of their legal right to get a no-strings-attached free credit report, it would have a harder time selling a “free” credit report that also requires consumers to sign up for credit monitoring at \$15 per month.

Experian spends tens of millions of dollars advertising FreeCreditReport.com, dwarfing government efforts to publicize the availability of free credit reports at AnnualCreditReport.com and effectively undermining the intent of the free credit report provision of the FACT Act. So it is no surprise that Experian defended its marketing practices with aggressive lobbying. I am confident that the FTC will stand up to that kind of pressure and issue strong pro-consumer regulations by the February 2010 deadline in the law.

If, however, the FTC has not issued final rules by the statutory deadline, Section 205 requires an interim disclosure, “Free credit reports are available under Federal law at: AnnualCreditReport.com,” to be included in any advertisement for free credit reports in any medium. That interim disclosure is intended to be required in all ads from February 2010, until the FTC rulemaking is finalized.

As chairman of the Permanent Subcommittee on Investigations, I have spent the last 4 years working to expose industry-wide credit card abuses. In 2007, my subcommittee held hearings which brought before the Senate not only consumers victimized by unfair practices, but also the credit card CEOs who approved those practices. In many cases, the card issuers that engaged in these practices relied upon information in a credit report.

Section 205 of the Credit CARD Act will help prevent the subversion of a key consumer protection. Again, I thank my colleagues for enacting Section 205 into law.

REMEMBERING TIANANMEN SQUARE

Mr. GRAHAM. Mr. President, today marks a somber anniversary. Twenty years ago today, months of peaceful protests throughout China culminated with the violent deaths of hundreds, if not thousands, of Chinese citizens advocating for democratic reforms. It is with sadness that we mark this occasion, but it is also an opportunity to

renew our call for political reform in the People's Republic of China.

One of the first things you see when you walk into my office is a large poster depicting the iconic image of a lone man staring down a line of Chinese tanks. This image has come to symbolize the worldwide struggle for democracy, the rule of law, and the promotion of basic human rights. Unfortunately, a generation of students in China can't identify the image or tell you about the events leading up to June 3 and 4, 1989. This is because China has failed to acknowledge or account for the actions that led up to this event.

While the intervening years since the tragedy have seen China grow into a rapidly developing country, economically intertwined with the rest of the world, China's failure to deal with the Tiananmen events prevents the nation from making the political reforms necessary to truly become a respected member of the international community.

In the years following Tiananmen, leaders of the Communist Party of China including Jiang Zemin, declared, “If we had not taken absolute measures at the time, we would not have the stability we enjoy today. A bad thing has turned out to be good.” General Chi Haotian, the General in charge of the People's Liberation Army's response to the protest later stated that, “I can tell you in a responsible and serious manner that at that time not a single person lost his life in Tiananmen Square.” Leaders of the military crackdown such as Deng Xiaoping and Li Peng, have never been held accountable for the actions of the People's Liberation Army and there has never been an official acknowledgement of the number of protesters killed or put in prison. Some accounts have claimed that more than 20,000 people were arbitrarily arrested and held without trial. A number of these people remain in prison today.

Today would have been a landmark occasion for the Chinese government to announce that they were starting an independent and open investigation relating to the events of June 4, 1989. However, other than checkpoints set up in Tiananmen Square and efforts by the Chinese government to prevent international media outlets from filming in the square, there are no signs that today is anything other than an ordinary day in China.

While the events of 20 years ago by the Chinese government launched a coordinated effort to prevent further unrest, it also helped crystallize a movement that continues today. Democracy advocates in China have built upon the legacy of Tiananmen and have led various efforts to force accountability and political reforms. All who watch China applaud the tireless work of Ding Zilin, the leader of Tiananmen Mothers, Liu Xiaobo and the rest of Charter 08, as well as countless others such as Jiang Qisheng who continue to face intimidat-

tion and imprisonment, yet persist with their cause.

They can rest assured that ultimately their efforts will be successful. Today's world is increasingly interconnected. Communication and travel have gotten easier, and with the development of the internet, despite censorship efforts, information is becoming more readily available to the Chinese people. Every day it becomes more difficult for the Chinese government to keep its people in the dark. They will find out about Tiananmen, they will find out about how the outside world operates, they will demand changes at home.

SRI LANKA

Mr. LEAHY. Mr. President, the recent defeat of Sri Lanka's Tamil Tigers, otherwise known as the Liberation Tigers of Tamil Eelam, or LTTE, is a very welcome development. Led by a reclusive, cult-like figure who apparently saw no evil in forcibly recruiting and brainwashing young children to become suicide bombers, the LTTE long ago forfeited any legitimate claim to representing the interests of the Tamil population. This resounding victory offers the possibility—after 30 long years of conflict, including ruthless acts of terrorism by the LTTE and other atrocities against civilians by both sides—of lasting peace for all inhabitants of that small island nation.

I first became interested in Sri Lanka when a good friend, James Spain, was the U.S. Ambassador there. He often told me of the beauty of the country and its people, and it has been painful to observe the suffering that has befallen them. That suffering was further exacerbated by the tsunami which crashed ashore in December 2004, causing immense destruction and loss of life. A member of my staff was in Sri Lanka at that time, but far enough inland to escape harm.

I have strongly supported humanitarian aid for Sri Lanka, and 2 years ago, as chairman of the State and Foreign Operations Subcommittee, I included additional funding for economic development in the north eastern region of the island after the LTTE were forced to retreat from that area. I look forward to being able to support additional reconstruction aid, so the northern communities that have been trapped in poverty and devastated by the conflict can recover. But for that to occur, several things need to happen.

The war claimed the lives of tens of thousands of Sri Lankan soldiers, LTTE combatants, and civilians. The tremendous loss and grief suffered by the families of both sides needs to be acknowledged in order for reconciliation to occur.

The government should immediately account for all persons detained in the conflict. It should provide access by international humanitarian organizations and the media to affected areas

and to populations of internally displaced persons who remain confined in camps, which should be administered by civilian authorities. These people should be allowed to leave the camps as soon as possible so they can start to rebuild their lives.

As soon as possible, the government needs to begin implementing policies for the devolution of power to provincial councils in the north and east as provided for in Sri Lanka's Constitution. This and other steps are needed to demonstrate that all Sri Lankans can live without fear and participate freely in the political process. It must address the longstanding, legitimate grievances of the Tamil population so they can finally enjoy the equal rights and opportunities to which they, like other Sri Lankan citizens, are entitled.

There is also the issue of accountability for violations of the laws of war. The LTTE had a long history of flagrant violations of human rights, including kidnappings, extrajudicial killings, disappearances, and deliberately targeting civilians. The Sri Lankan military engaged in similar crimes. Although the Sri Lankan Government prevented access for journalists to the war zone in order to avoid scrutiny of the military's conduct, video footage was smuggled out. And as the smoke has lifted from the battlefield there are reports that thousands of Tamil civilians who were trapped in the so-called safe zone perished in the last months of the war. There is abundant evidence that they were deliberately targeted with relentless shelling and aerial bombardments, despite repeated appeals by the international community that they be spared. There are also growing fears of retaliatory attacks against those who criticized such tactics.

The recent decision of the United Nations Human Rights Council rejecting calls, including by Navi Pillay, the United Nations High Commissioner for Human Rights, for an international investigation of these violations is unfortunate but not surprising. Several of the Council's members routinely arbitrarily imprison and torture political opponents in their own countries. The Sri Lankan Government, which seeks international aid to rebuild, insists that what occurred there is an "internal" matter and that for outsiders to call for an independent investigation and justice for the victims is an "infringement of sovereignty." To the contrary, the denial of basic rights and freedoms is a legitimate concern of people everywhere, whenever it occurs.

It is now incumbent on the Sri Lankan authorities to demonstrate that the rule of law is respected, that sweeping security measures that have been used to silence journalists, doctors, lawyers and other citizens who have criticized government policies are revised or repealed, that the government takes seriously its duty to defend the rights of all Sri Lankans irrespective of religious affiliation or eth-

nicity, and that those responsible for crimes against humanity or other violations of human rights are held accountable.

Thankfully, a long, bloody chapter of Sri Lanka's history has ended. But it is the next chapter that will determine whether justice and lasting peace can be achieved. If the Sri Lankan Government seizes this opportunity to unite the Sri Lankan people in support of an inclusive effort to address the causes of the conflict, the United States will be a strong partner in that effort.

HONORING AMERICA'S WORLD WAR II VETERANS

Mr. MARTINEZ. Mr. President, this week, we pay tribute to those who fought for freedom's cause during World War II. Two monumental efforts occurred that resulted in turning the war efforts in favor of the Allied Forces. These events are D-day and the Battle of Midway. Each was a demonstration of our nation's commitment to freedom, a blow against tyranny, and the tremendous sacrifice everyday Americans are willing to make for peace and security.

This Saturday marks the 65th anniversary of D-day, the day the tide began to turn against totalitarianism in World War II. On that day, Allied troops stormed a Normandy beachhead to claim a foothold on the edge of Nazi-occupied Europe. More than 1,400 Americans sacrificed their lives during the invasion, including 130 Floridians.

As the largest land, air, and sea invasion in history, D-day brought together Allied forces and unprecedented military resources, including more than 150,000 servicemen, 13,000 aircraft, and 5,000 ships. By the day's end, more than 9,000 Allied warriors had sacrificed life and limb so that others could begin the perilous journey into Europe to defeat the forces commanded by Adolf Hitler.

D-day tested the courage and character of every American involved in the invasion. Like those who came before them, the soldiers who fought that day fought courageously for a freedom the men and women of our military still fight to defend.

Coinciding with the anniversary D-day is the 67th anniversary of the Battle of Midway, another turning point in the war. The battle claimed the lives of more than 300 Americans and helped to slow Japan's advance across the Pacific. America's forces executed the mission with tremendous skill and helped deliver one of the war's most decisive and crucial victories.

On these anniversaries, let us remember and recognize the courage of those who sacrificed their lives to restore hope through the liberation of those in occupied territories. Let us honor and thank those veterans that continue to share their unique stories from these extraordinary battles. May God bless the men and women of the U.S. military, and continue to bless our great Nation.

ADDITIONAL STATEMENTS

COMMENDING MEHARRY MEDICAL COLLEGE

• Mr. ALEXANDER. Mr. President, before I became a member of this body, I was privileged to serve as the president of University of Tennessee and as Secretary of Education under President George H.W. Bush. Therefore, I know how important it is for our nonprofits to make investments in our system of higher education. That is why I am pleased to report that Meharry Medical College in Nashville is poised to receive the single largest endowment gift in the college's 130-year history.

The Robert Wood Johnson Foundation, the largest philanthropic organization in America devoted exclusively to health care, has selected Meharry to receive a multimillion-dollar endowment and other funding to establish the Robert Wood Johnson Center for Health Policy at Meharry Medical College to produce our country's next generation of health care policy experts. Meharry will be partnering with Vanderbilt University College of Arts and Science on this project.

This gift is especially timely as the Nation grapples with economic challenges and millions of uninsured citizens amid growing bipartisan support for reforming the U.S. health care system. The new center aims to serve as a think tank for the pressing health care issues of the day; to increase the diversity of health policy scholars with doctors who are formally trained in sociology and economics; and to provide students and faculty with new curricula, research and academic offerings in health policy. The center seeks to reshape the future of America's health policies by creating a more inclusive pool of experts trained in health policy and allied disciplines.

Meharry Medical College is the Nation's largest private, independent, historically Black academic health center. It produces over 20 percent of the Nation's African-American physicians and 33 percent of the Nation's African-American dentists. These health professionals take care of those most in need: the underserved in our rural and urban communities across the country.

I know Meharry is pleased to be selected to receive this gift and produce scholars who will make a real impact on our health policy at this critical time. Though their graduates may serve the country, we Tennesseans are especially proud of Meharry and its many contributions to our State and the Nation.●

COMMENDING KATHLEEN L. "KATIE" WOLF

• Mr. BAYH. Mr. President, today I wish to honor my fellow Hoosier, Kathleen L. "Katie" Wolf. Today we recognize the many accomplishments of Katie, a distinguished public servant and a model citizen who over the years

has contributed much to her community in Monticello and to the Hoosier State.

A native of Princeton Township, IN, Katie Wolf has long been a pillar of her community. In 1967, she served as the secretary on the founding board of the White County United Fund, now known as the United Way of White County.

In 1968, Katie ran and was elected to the position of clerk of the White County Circuit Court, a role she filled for over a decade before being nominated to the Judiciary Committee for the Democratic National Committee. In 1984, Katie became the first woman to run for and win a position in her district in the Indiana House of Representatives, and during her first term she was elected Outstanding Freshman Legislator. In 1986, Katie was appointed senator for District Seven in the Indiana State Senate.

Throughout her career, Katie has been the recipient of numerous awards and designations, a testament to her stature as a model Hoosier and as a leader in public life in Indiana. She has received the Director's Award from the National Federation of Independent Businesses, the Director's Award from the Purdue University Cooperative Extension, and Legislator of the Year from the Indiana Trial Lawyers Association. Former Indiana Governor Frank O'Bannon presented Katie with the Sagamore of the Wabash Award, which is the highest honor that the Governor of Indiana can bestow. It is an award reserved for those who have made outstanding contributions to the Hoosier State. Last month, she received an honorary doctor of laws from Saint Joseph's College in Rensselaer.

Next week, Katie will receive an award from the local chapter of Women Giving Together, an organization committed to strengthening the communities of White County. I am proud to have this opportunity to recognize her for the remarkable service she has rendered on behalf of the people of Indiana and congratulate her on receiving another well-deserved distinction.●

125TH ANNIVERSARY OF THE FOUNDING OF STOCKHOLM, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I wish to pay tribute to the community of Stockholm on reaching its 125th year. The people who make up this community are proud of their heritage and will be celebrating both their resilient history and their promising future June 13 to 14, 2009.

This strong rural community in northeast South Dakota was primarily founded by Scandinavian homesteaders who named the town after Stockholm, Sweden. Also in this area was Brown Earth, an Indian settlement of 52 families. These communities were closely intertwined and shared churches and a post office. In 1896, the town joined together to construct a creamery, financed at \$25 a share.

In celebration of reaching this historic milestone, the town has painted 24 Dala Hasten, traditional Swedish wooden horses. There will also be a parade, races, and musical events to commemorate Stockholm's notable occasion.

The welcoming spirit of Stockholm's citizens helped sculpt this town's unique history, and I am confident that this strength of character will help them continue through the coming years. I am proud to represent this community, and I commend this town on reaching this historic anniversary.●

125TH ANNIVERSARY OF THE FOUNDING OF MOUND CITY, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I wish to pay tribute to the 125th anniversary of the founding of Mound City, SD. This rural community is the seat of Campbell County in northern South Dakota. This town was built on hard work and a spirit of community 125 years ago, and those same values sustain it today.

Edward C. and his father E.H. McIntosh were the first settlers, arriving in the area on June 10, 1884. They called the town Mound City because of the small hills to the north. Soon after, an elegant hotel and post office were constructed. The first newspaper, the Mound City Journal, was started in 1886. Mound City also had a flour mill, built in 1893 by contributions by the town's citizens. After it burned down the first night of operations, the town rallied and raised enough money to again build the mill.

This perseverance and dedication illustrates what has gotten Mound City to this monumental anniversary, and I am proud to recognize them on their achievements. The citizens of this town are dedicated and hard working, demonstrating what a great State South Dakota is.●

COMMENDING ELMET TECHNOLOGIES

● Ms. SNOWE. Mr. President, as we are all aware, the lengthy process of globalization has made it necessary for many American businesses to promote their goods in international markets. And despite the present economic recession, Maine businesses exported a record \$3 billion in goods last year. I wish to highlight Elmet Technologies, a shining company that has been a part of that historic figure and has excelled in growing its customer base by marketing to overseas firms.

Elmet Technologies was founded in Lewiston in 1929, at the beginning of the Great Depression. At that time, the company had 50 employees and 13,400 square feet of manufacturing space. The firm now employs over 230 people and occupies a 220,000-square-foot facility. Elmet makes top-quality, high-performance advanced materials and

specialized refractory metal products, such as wire, filaments, and rods. Its products have numerous applications for a variety of industries. For instance, the company's components and materials are used in electronic devices such as GPS units and digital music players and medical equipment like x-ray tubes.

Elmet supplies a wide range of customers, from IBM and Philips Lighting, to Veeco, which produces process equipment and metrology tools, and Varian, producers of medical equipment. These firms have turned to Elmet because of its high-quality products, attention to customer detail and specification, and its employees' stellar Maine work ethic. Additionally, what makes Elmet's production method so effective is that the company uses raw materials instead of base materials, allowing employees to easily customize products based on consumer specifications. The company has also earned two critical certifications for quality and environmental standards from the International Organization for Standardization, ISO.

Though an 80-year-old company, Elmet Technologies is relatively new to global trade. It began only recently promoting its products abroad and now has clients in places as far away as Europe, Israel, and China. Elmet's strategy is paying off and earning the company much-deserved recognition. Last Thursday, the Maine International Trade Center presented Elmet Technologies with its 2009 Exporter of the Year Award. The award demonstrates the determination and commitment of Elmet's leaders in forging new international marketplaces for its extensive variety of products that serve a wide range of high-tech and emerging industries—from electronics and lighting, to aircraft and automotive.

The Maine International Trade Center is Maine's small business link to the rest of the world. It is a public-private partnership between the State of Maine and its businesses. The center's goal is to increase international trade in Maine and in particular to assist Maine's businesses in exporting goods and services. Clearly it sees in Elmet Technologies the entrepreneurial spirit and innovation that make Maine's small businesses so unique and successful.

Elmet Technologies' president and CEO, Jack Jensen, has summed up his company's philosophy quite simply: "Listen. Create. Delight." Based on the company's record of success and customer satisfaction, this motto has served the company well in any language. I congratulate everyone at Elmet Technologies on their recent recognition and wish them new and exciting export opportunities in the years to come.●

130TH ANNIVERSARY OF WORTHING, SOUTH DAKOTA

● Mr. THUNE. Mr. President, today I recognize Worthing, SD. Founded in

1879, the town of Worthing will celebrate its 130th anniversary this year.

Located in Lincoln County, Worthing possesses the strong sense of community that makes South Dakota such an outstanding place to live and work. Throughout its rich history, Worthing has continued to be a strong reflection of South Dakota's greatest values and traditions. The city of Worthing has much to be proud of, and I am confident that Worthing's success will continue well into the future.

I would like to offer my congratulations to the citizens of Worthing on this milestone anniversary and wish them continued prosperity in the years to come.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 11:32 a.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following bills and concurrent resolution, in which it requests the concurrence of the Senate:

H.R. 31. An act to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes.

H.R. 1385. An act to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rapahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

H.R. 2090. An act to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building."

H.R. 2173. An act to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the "Carl B. Smith Post Office."

H. Con. Res. 109. Concurrent resolution honoring the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1385. An act to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Di-

vision, the Upper Mattaponi Tribe, the Rapahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe; to the Committee on Indian Affairs.

H.R. 2090. An act to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2173. An act to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the "Carl B. Smith Post Office"; to the Committee on Homeland Security and Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-1787. A communication from the Director of Regulations Management, National Cemetery Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Headstone and Marker Application Process" (RIN2900-AM53) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Veterans' Affairs.

EC-1788. A communication from the Chief Counsel, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds" (Docket No. BPD GSRs 09-01) received on May 29, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC-1789. A communication from the Acting Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report relative to the country of origin and sellers of uranium and uranium enrichment services purchased by owners and operators of U.S. civilian nuclear power reactors for calendar year 2008; to the Committee on Energy and Natural Resources.

EC-1790. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report relative to using private contributions to acquire land adjacent to a designated wilderness area in Marin County, California; to the Committee on Energy and Natural Resources.

EC-1791. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 6" (RIN3150-A160) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Environment and Public Works.

EC-1792. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's 2009 Annual Report on the Supplemental Security Income Program; to the Committee on Finance.

EC-1793. A communication from the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report on the Food and Drug Administration Advisory Committee Vacancies and Public Disclosures for FY 2008; to the Committee on Health, Education, Labor, and Pensions.

EC-1794. A communication from the Secretary, Department of Health and Human Services, transmitting, pursuant to law, a report relative to animal drug user fees and related expenses for Fiscal Year 2008; to the

Committee on Health, Education, Labor, and Pensions.

EC-1795. A communication from the Acting Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period ending March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1796. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1797. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Semiannual Report of the Department's Inspector General for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1798. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1799. A communication from the Acting Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1800. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Inspector General's Semiannual Report for the period ending March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1801. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1802. A communication from the Secretary of Labor, transmitting, pursuant to law, the Office of Inspector General's Semiannual Report for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1803. A communication from the Chairman, Board of Governors, U.S. Postal Service, transmitting, pursuant to law, the Semiannual Report on the Audit, Investigative, and Security Activities of the U.S. Postal Service for the period of October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-1804. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Performance Budget for Fiscal Year 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-1805. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-74, "Health Occupations Revision General Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1806. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-79, "KIPP DC-Douglass Property Tax Exemption Temporary Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1807. A communication from the Chairman, Council of the District of Columbia,

transmitting, pursuant to law, a report on D.C. Act 18-80, "Newborn Safe Haven Temporary Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1808. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-81, "Department of Parks and Recreation Term Employee Appointment Temporary Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1809. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-82, "Rent Administrator Hearing Authority Temporary Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1810. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-83, "Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption and Equitable Real Property Tax Relief Temporary Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1811. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-84, "Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1812. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-85, "Closing of an Alley in Square 5872, S.O. 07-2225, Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1813. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-86, "Retail Service Station Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1814. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-87, "Closing of a Portion of a Public Alley in Square 4488, S.O. 07-7333, Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1815. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-88, "Kenilworth-Parkside Partial Street Closure, S.O. 07-1213, S.O. 07-1214 and Building Restriction Line Elimination, S.O. 07-1212 Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1816. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-89, "Mortgage Lender and Broker Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1817. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-90 "Closing, Dedication and Designation of Public Streets at The Yards Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1818. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-98, "CEMI-Ridgecrest, Inc.-Walter Washington Community Center Real Property Tax Exemption and Equitable Real Property Tax Relief Temporary Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-1819. A communication from the Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, a report relative to a final rule revising the NASA FAR Supplement to update NASA's Mentor-Protégé Program (RIN 2700-AD41); to the Committee on Commerce, Science, and Transportation.

EC-1820. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the 2008 Report on Apportionment of Membership on the Regional Fishery Management Councils; to the Committee on Commerce, Science, and Transportation.

EC-1821. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Beatty and Goldfield, Nevada)" (MB Docket No. 08-68) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1822. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Williston, South Carolina)" (MB Docket No. 08-201) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1823. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Nevada City and Mineral, California)" (MB Docket No. 09-9) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1824. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2009 Commercial Fishery for Tilefishes" (RIN 0648-XO64) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1825. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish and Pelagic Shelf Rockfish for Trawl Catcher Vessels Participating in the Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska" (RIN0648-XN95) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1826. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish Pacific Ocean Perch, and Pelagic Shelf Rockfish in the Western Regulatory Area and West Yakutat District of the Gulf of Alaska" (RIN0648-XN93) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1827. A communication from the Acting Director of Sustainable Fisheries, National

Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Deep Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska" (RIN0648-XO93) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1828. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of Northeastern United States; Summer Flounder Fishery; Quota Transfers (NC to VA and VA to NJ)" (RIN0648-XO65) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1829. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Limited Access General Category Scallop Fishery to Individual Fishing Quota Scallop Vessels" (RIN0648-XP03) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1830. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2009 Gulf of Mexico; Closure of the 2009 Gulf of Mexico Recreational Fishery for Red Snapper" (RIN0648-XO98) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1831. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-grouper Fishery of the South Atlantic; Closure of the 2009 Commercial Fishery for Black Sea Bass in the South Atlantic" (RIN0648-XP20) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1832. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2009 Management Measures" (RIN0648-AX81) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1833. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Guideline Harvest Levels for Charter Halibut Fisheries in International Pacific Halibut Commission Regulatory Area 2C" (RIN0648-AX17) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1834. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, "Magnuson-Stevens Act Provisions; Fisheries Off West

Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures" (RIN0648-AX24) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1835. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, "Fisheries of the Northeastern United States: Atlantic Bluefish Fishery; 2009 Atlantic Bluefish Specifications" (RIN0648-AX49) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1836. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, "Fisheries of the Northeastern United States; 2009 Specifications for the Spiny Dogfish Fishery" (RIN0648-AX57) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1837. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Use of Force Training Flights, San Pablo Bay, CA" ((RIN1625-AA00)(Docket No. USCG-2009-0300)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1838. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Copper Canyon Clean Up" ((RIN1625-AA00)(Docket No. USCG-2009-0242)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1839. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Sea World May Fireworks; Mission Bay, San Diego, California" ((RIN1625-AA00)(Docket No. USCG-2009-0266)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1840. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Paradise Point Fourth of July Fireworks; Mission Bay, San Diego, CA" ((RIN1625-AA00)(Docket No. USCG-2009-0125)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1841. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; June and July Northwest Harbor Safety Zone; Northwest Harbor, San Clemente Island, CA" ((RIN1625-AA00)(Docket No. USCG-2009-0330)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1842. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; ESL Air and Water Show, Lake Ontario, Ontario Beach Park, Rochester, NY" ((RIN1625-AA00)(Docket No. USCG-2009-0343)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1843. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI" ((RIN1625-AA00)(Docket No. USCG-2009-0089)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1844. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; F/V PATRIOT, Massachusetts Bay, MA" ((RIN1625-AA00)(Docket No. USCG-2009-0424)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1845. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Allegheny River Mile Marker 0.4 to Mile Marker 0.6, Pittsburgh, PA" ((RIN1625-AA00)(Docket No. USCG-2009-0016)) received in the Office of the President of the Senate on June 1, 2009; to the Committee on Commerce, Science, and Transportation.

EC-1846. A communication from the Acting Assistant Administrator for Fisheries, transmitting, pursuant to law, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico Gulf of Reef Fish Longline Restriction" (RIN0648-AX68) received in the Office of the President of the Senate on May 29, 2009; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. AKAKA, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 407. A bill to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes (Rept. No. 111-24).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary:

David F. Hamilton, of Indiana, to be United States Circuit Judge for the Seventh Circuit;

Andre M. Davis, of Maryland, to be United States Circuit Judge for the Fourth Circuit; and

Thomas E. Perez, of Maryland, to be an Assistant Attorney General.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ENSIGN (for himself, Mr. NELSON of Nebraska, Mr. MCCONNELL, Mr. SHELBY, Mr. VITTER, Mr. ROBERTS, Mr. GRAHAM, Mr. BROWNBACK, Mr. GRASSLEY, Mr. INHOFE, Mr. VOINOVICH, Mr. WICKER, Mr. BUNNING, Mr. COCHRAN, Mr. CORNYN, Mr. THUNE, and Mr. CHAMBLISS):

S. 1179. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

By Mr. AKAKA:

S. 1180. A bill to provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.

By Mr. WYDEN:

S. 1181. A bill to provide for a demonstration project to examine whether community-level public health interventions can result in lower rates of chronic disease for individuals entering the Medicare program; to the Committee on Finance.

By Mrs. GILLIBRAND:

S. 1182. A bill to amend the Chinese Student Protection Act of 1992 to eliminate the offset in per country numerical level required under that Act; to the Committee on the Judiciary.

By Mr. DURBIN (for himself and Mr. BROWNBACK):

S. 1183. A bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes; to the Committee on Foreign Relations.

By Mr. VITTER (for himself, Mr. ENSIGN, Mr. THUNE, Mr. DEMINT, Mr. BUNNING, Mr. ENZI, Mr. ROBERTS, and Mr. BARRASSO):

S. 1184. A bill to amend the National Labor Relations Act to permit employers to pay higher wages to their employees; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN:

S. 1185. A bill to amend titles XVIII and XIX of the Social Security Act to ensure that low-income beneficiaries have improved access to health care under the Medicare and Medicaid programs; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. HARKIN):

S. 1186. A bill to amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs; to the Committee on Finance.

By Mrs. MURRAY:

S. 1187. A bill to amend the Homeland Security Act of 2002 to authorize grants for use in response to homeland security events of national and international significance; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REED (for himself, Ms. MURKOWSKI, and Mr. WHITEHOUSE):

S. 1188. A bill to amend the Public Health Service Act with respect to mental health services; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BAYH (for himself and Mr. BROWN):

S. 1189. A bill to require the Secretary of Energy to conduct a study of the impact of energy and climate policy on the competitiveness of energy-intensive manufacturing and measures to mitigate those effects; to

the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mrs. HUTCHISON):

S. 1190. A bill to provide financial aid to local law enforcement officials along the Nation's borders, and for other purposes; to the Committee on the Judiciary.

By Mr. BAYH:

S. 1191. A bill to require the Secretary of Energy to prepare a report on climate change and energy policy in the People's Republic of China and in the Republic of India; to the Committee on Energy and Natural Resources.

By Mr. WYDEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mr. MENENDEZ, Mr. MCCAIN, Mrs. GILLIBRAND, and Mr. ENSIGN):

S. 1192. A bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property; to the Committee on Finance.

By Ms. SNOWE (for herself and Ms. KLOBUCHAR):

S. 1193. A bill to amend title 49, United States Code, to enhance aviation safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, and Mrs. HUTCHISON):

S. 1194. A bill to reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 1195. A bill to require the Secretary of Agriculture to carry out the Philadelphia universal feeding pilot program until the last day of the 2012-2013 school year of the School District of Philadelphia; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. Res. 168. A resolution commending the University of Washington women's softball team for winning the 2009 NCAA Women's College World Series; considered and agreed to.

By Mr. MENENDEZ (for himself, Ms. SNOWE, Mrs. SHAHEEN, and Ms. MIKULSKI):

S. Res. 169. A resolution expressing the sense of the Senate that the Government of the former Yugoslav Republic of Macedonia should work within the framework of the United Nations process with Greece to achieve longstanding United States and United Nations policy goals of finding a mutually acceptable composite name, with a geographical qualifier and for all international uses for the former Yugoslav Republic of Macedonia; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 211

At the request of Mr. BURR, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human

services and volunteer services, and for other purposes.

S. 251

At the request of Mrs. HUTCHISON, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 251, a bill to amend the Communications Act of 1934 to permit targeted interference with mobile radio services within prison facilities.

S. 255

At the request of Mr. WHITEHOUSE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 255, a bill to amend the Truth in Lending Act to empower the States to set the maximum annual percentage rates applicable to consumer credit transactions, and for other purposes.

S. 538

At the request of Mrs. LINCOLN, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 538, a bill to increase the recruitment and retention of school counselors, school social workers, and school psychologists by low-income local educational agencies.

S. 554

At the request of Mr. BROWN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 554, a bill to improve the safety of motorcoaches, and for other purposes.

S. 571

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 571, a bill to strengthen the Nation's research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, and study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes.

S. 581

At the request of Mr. BENNET, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 581, a bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to require the exclusion of combat pay from income for purposes of determining eligibility for child nutrition programs and the special supplemental nutrition program for women, infants, and children.

S. 634

At the request of Mr. HARKIN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 634, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 645

At the request of Mrs. LINCOLN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 653

At the request of Mr. CARDIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 653, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes.

S. 718

At the request of Mr. HARKIN, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 758

At the request of Mr. BAUCUS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 758, a bill to authorize the production of Saint-Gaudens Double Eagle ultra-high relief bullion coins in palladium to provide affordable opportunities for investments in precious metals, and for other purposes.

S. 799

At the request of Mr. DURBIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 799, a bill to designate as wilderness certain Federal portions of the red rock canyons of the Colorado Plateau and the Great Basin Deserts in the State of Utah for the benefit of present and future generations of people in the United States.

S. 823

At the request of Ms. SNOWE, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 823, a bill to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

S. 846

At the request of Mr. DURBIN, the names of the Senator from Montana (Mr. TESTER) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 846, a bill to award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.

S. 883

At the request of Mr. KERRY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 883, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the

Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history.

S. 908

At the request of Mr. MCCONNELL, his name was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

At the request of Mr. BAYH, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 908, *supra*.

S. 947

At the request of Mrs. LINCOLN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 947, a bill to amend title XVIII of the Social Security Act to provide for the treatment of certain physician pathology services under the Medicare program.

S. 962

At the request of Mr. CARDIN, his name was added as a cosponsor of S. 962, a bill to authorize appropriations for fiscal years 2009 through 2013 to promote an enhanced strategic partnership with Pakistan and its people, and for other purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1023

At the request of Mr. DORGAN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

S. 1026

At the request of Mr. CORNYN, the names of the Senator from Florida (Mr. MARTINEZ), the Senator from Montana (Mr. TESTER) and the Senator from Tennessee (Mr. CORKER) were added as cosponsors of S. 1026, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of marked absentee ballots of absent overseas uniformed service voters, and for other purposes.

S. 1050

At the request of Mr. ROCKEFELLER, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1050, a bill to amend title XXVII of the Public Health Service Act to establish Federal standards for health insurance forms, quality, fair marketing, and honesty in out-of-network coverage in the group and individual health insurance markets, to improve transparency and account-

ability in those markets, and to establish a Federal Office of Health Insurance Oversight to monitor performance in those markets, and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Illinois (Mr. BURRIS) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1099

At the request of Mr. COBURN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1099, a bill to provide comprehensive solutions for the health care system of the United States, and for other purposes.

S. 1156

At the request of Mr. HARKIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 1156, a bill to amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to reauthorize and improve the safe routes to school program.

S. 1157

At the request of Mr. CONRAD, the names of the Senator from Utah (Mr. HATCH) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1157, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1158

At the request of Ms. STABENOW, the names of the Senator from Vermont (Mr. SANDERS) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 1158, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 1160

At the request of Mr. SCHUMER, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1160, a bill to provide housing assistance for very low-income veterans.

S. 1171

At the request of Mr. PRYOR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1171, a bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program.

S.J. RES. 14

At the request of Mr. BROWNBACK, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S.J. Res. 14, a joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the name of the Senator from Nebraska (Mr. JOHANNES) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. RES. 167

At the request of Mr. INHOFE, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from Florida (Mr. MARTINEZ), the Senator from Kentucky (Mr. BUNNING) and the Senator from Colorado (Mr. UDALL) were added as cosponsors of S. Res. 167, a bill commending the people who have sacrificed their personal freedoms to bring about democratic change in the People's Republic of China and expressing sympathy for the families of the people who were killed, wounded, or imprisoned, on the occasion of the 20th anniversary of the Tiananmen Square Massacre in Beijing, China from June 3 through 4, 1989.

AMENDMENT NO. 1242

At the request of Mr. BAYH, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of amendment No. 1242 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

AMENDMENT NO. 1245

At the request of Ms. STABENOW, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 1245 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA:

S. 1180. A bill to provide for greater diversity within, and to improve policy direction and oversight of, the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, I rise today to join my colleague in the House of Representatives, Congressman DANNY K. DAVIS, to reintroduce the Senior Executive Service Diversity Assurance Act of 2009. This legislation promotes greater diversity among the Federal Government's elite corps of senior executives and establishes a central office of management for these top-level Federal executives. Last year, we introduced this bill. Unfortunately, the Senate was not able to pass the bill before the adjournment of the 110th Congress.

The Senior Executive Service, SES, is the most senior level of career civil servants in the Federal Government. Senior executives are essential to an efficient and effective Federal Government in management and operations. Over the next ten years, ninety percent of the career SES will be eligible to retire. As agencies begin to consider employees for SES positions, it is important that they develop pipelines into highly qualified candidate pools that represent diverse backgrounds, and ensure that applicants of all races, ethnicities, genders, and abilities be equally considered. According to reports by the Government Accountability Office, a diverse SES can bring a greater variety of perspectives and approaches to policy development, strategic planning, problem solving, and decision making.

A 2007 Federal Equal Opportunity Recruitment Program report by the Office of Personnel Management, OPM, showed that the percentage of minorities and women at senior pay levels in the Federal Government, including SES, is lower than in the total civilian labor force and the Federal workforce as a whole. According to a 2007 GAO report, only 15.8 percent of the SES was minorities compared to 32.8 percent of the entire workforce. The Senior Executive Service Diversity Assurance Act directly addresses this gap.

This legislation would require Federal agencies to submit a plan to OPM on how the agency is removing barriers to minorities, women, and individuals with disabilities to obtain appointments in the SES.

The bill encourages agencies, to the extent practicable, to include minorities, women, and individuals with disabilities on their Executive Resource Boards as well as other qualification review boards that evaluate SES candidates.

Furthermore, the legislation re-establishes the Senior Executive Service Resource Office, SESRO, at OPM, which was dissolved during an internal reorganization of OPM in 2003. This bill would restore SESRO's responsibilities of overseeing and managing the corps of senior executives. SESRO would serve as a central resource for agencies and provide oversight of agency recruitment and candidate development. Additionally, it would be responsible for ensuring diversity within the SES through strategic partnerships,

mentorship programs, and more stringent reporting requirements. For too long, ethnic minorities, women, and persons with disabilities have been under-represented and this bill attempts to reform shortcomings in the system.

In America's workforce, we need leadership that reflects its varied cultures and backgrounds. A more diverse SES will better ensure that the executive management of the Federal Government is responsive to the needs, policies, and goals of the Nation.

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

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

S. 1180

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Senior Executive Service Diversity Assurance Act of 2009".

SEC. 2. FINDINGS.

Congress finds that—

(1) according to the most recent findings from the Government Accountability Office—

(A) minorities made up 22.5 percent of the individuals serving at the GS-15 and GS-14 levels and 15.8 percent of the Senior Executive Service in 2007;

(B) women made up 34.3 percent of the individuals serving at the GS-15 and GS-14 levels and 29.1 percent of the Senior Executive Service in 2007; and

(C) although the number of career Senior Executive Service members increased from 6,110 in 2,000 to 6,555 in 2007, the representation of African American men in the career Senior Executive Service declined during that same period from 5.5 percent to 5.0 percent; and

(2) according to the Office of Personnel Management—

(A) black employees represented 6.1 percent of employees at the Senior Pay levels and 17.9 percent of the permanent Federal workforce compared to 10 percent in the civilian labor force in 2008;

(B) Hispanic employees represented 4.0 percent of employees at the Senior Pay levels and 7.9 percent of the permanent Federal workforce compared to 13.2 percent of the civilian labor force in 2008; and

(C) women represented 29.1 percent of employees at the Senior Pay levels and 44.2 percent of the permanent Federal workforce compared to 45.6 percent of the civilian labor force in 2008.

SEC. 3. DEFINITIONS.

In this Act—

(1) the term "Director" means the Director of the Office of Personnel Management;

(2) the term "Senior Executive Service" has the meaning given under section 2101a of title 5, United States Code;

(3) the terms "agency", "career appointee", and "career reserved position" have the meanings given under section 3132 of title 5, United States Code; and

(4) the term "SES Resource Office" means the Senior Executive Service Resource Office established under section 4.

SEC. 4. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.

(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall establish within the

Office of Personnel Management an office to be known as the Senior Executive Service Resource Office.

(b) MISSION.—The mission of the SES Resource Office shall be to—

(1) improve the efficiency, effectiveness, and productivity of the Senior Executive Service through policy formulation and oversight;

(2) advance the professionalism of the Senior Executive Service; and

(3) ensure that, in seeking to achieve a Senior Executive Service reflective of the Nation's diversity, recruitment is from qualified individuals from appropriate sources.

(c) FUNCTIONS.—

(1) IN GENERAL.—The functions of the SES Resource Office are to—

(A) make recommendations to the Director with respect to regulations; and

(B) provide guidance to agencies, concerning the structure, management, and diverse composition of the Senior Executive Service.

(2) SPECIFIC FUNCTIONS.—In order to carry out the purposes of this section, the SES Resource Office shall—

(A) take such actions as the SES Resource Office considers necessary to manage and promote an efficient, elite, and diverse corps of senior executives by—

(i) creating policies for the management and improvement of the Senior Executive Service;

(ii) providing oversight of the performance, structure, and composition of the Senior Executive Service; and

(iii) providing guidance and oversight to agencies in the management of senior executives and candidates for the Senior Executive Service;

(B) be responsible for the policy development, management, and oversight of the Senior Executive Service pay and performance management system;

(C) develop standards for certification of each agency's Senior Executive Service performance management system and evaluate all agency applications for certification;

(D) be responsible for coordinating, promoting, and monitoring programs for the advancement and training of senior executives, including the Senior Executive Service Federal Candidate Development Program;

(E) provide oversight of, and guidance to, agency executive resources boards;

(F) be responsible for the administration of the qualifications review board;

(G) establish and maintain annual statistics (in a form that renders such statistics useful to appointing authorities and candidates) on—

(i) the total number of career reserved positions at each agency;

(ii) the total number of vacant career reserved positions at each agency;

(iii) of the positions under clause (ii), the number for which candidates are being sought;

(iv) the amount of time a career reserved position is vacant;

(v) the amount of time it takes to hire a candidate into a career reserved position;

(vi) the number of individuals who have been certified in accordance with section 3393(c) of title 5, United States Code, and the composition of that group of individuals with regard to race, ethnicity, sex, age, and individuals with disabilities;

(vii) the composition of the Senior Executive Service with regard to race, ethnicity, sex, age, and individuals with disabilities;

(viii) the composition of executive resources boards with regard to race, ethnicity, sex, and individuals with disabilities; and

(ix) the composition of qualifications review boards with regard to race, ethnicity, sex, and individuals with disabilities;

(H) make available to the public through the official public internet site of the Office of Personnel Management, the data collected under subparagraph (G);

(I) establish and promote mentoring programs for potential candidates for the Senior Executive Service, including candidates who have been certified as having the executive qualifications necessary for initial appointment as a career appointee under a program established under to section 3396(a) of title 5, United States Code;

(J) conduct a continuing program for the recruitment of women, members of racial and ethnic minority groups, and individuals with disabilities for Senior Executive Service positions, with special efforts directed at recruiting from educational institutions, professional associations, and other sources;

(K) advise agencies on the best practices for an agency in utilizing or consulting with an agency's equal employment or diversity office or official (if the agency has such an office or official) with regard to the agency's Senior Executive Service appointments process; and

(L) evaluate and implement strategies to ensure that agencies conduct appropriate outreach to other agencies to identify candidates for Senior Executive Service positions.

(d) **PROTECTION OF INDIVIDUALLY IDENTIFIABLE INFORMATION.**—For purposes of subsection (c)(2)(H), the SES Resource Office shall combine data for any agency that is not named in section 901(b) of chapter 31, United States Code, to protect individually identifiable information.

(e) **COOPERATION OF AGENCIES.**—The head of each agency shall provide the Office of Personnel Management with such information as the SES Resource Office may require in order to carry out subsection (c)(2)(G).

(f) **STAFFING.**—The Director of the Office of Personnel Management shall make such appointments as necessary to staff the SES Resource Office.

SEC. 5. CAREER APPOINTMENTS.

(a) **PROMOTING DIVERSITY IN THE CAREER APPOINTMENTS PROCESS.**—Section 3393(b) of title 5, United States Code, is amended by inserting after the first sentence the following: "In establishing an executive resources board, the head of the agency shall, to the extent practicable, ensure diversity of the board and of any subgroup thereof or other evaluation panel related to the merit staffing process for career appointees, by including members of racial and ethnic minority groups, women, and individuals with disabilities."

(b) **REGULATIONS.**—Not later than 1 year after the date of the enactment of this Act, the Director shall promulgate regulations to implement subsection (a).

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report evaluating agency efforts to improve diversity in executive resources boards based on the information collected by the SES Resource Office under section 4(c)(2)(G) (viii) and (ix).

SEC. 6. ENCOURAGING A MORE DIVERSE SENIOR EXECUTIVE SERVICE.

(a) **SENIOR EXECUTIVE SERVICE DIVERSITY PLANS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, each agency, in consultation with the Office of Personnel Management and the Chief Human

Capital Officers Council, shall submit to the Office of Personnel Management a plan to enhance and maximize opportunities for the advancement and appointment of minorities, women, and individuals with disabilities in the agency to the Senior Executive Service. Agency plans shall be reflected in the strategic human capital plan.

(2) **CONTENTS.**—Agency plans shall address how the agency is identifying and eliminating barriers that impair the ability of minorities, women, and individuals with disabilities to obtain appointments to the Senior Executive Service and any actions the agency is taking to provide advancement opportunities, including—

(A) conducting outreach to minorities, women, and individuals within the agency and outside the agency;

(B) establishing and maintaining training and education programs to foster leadership development;

(C) identifying career enhancing opportunities for agency employees;

(D) assessing internal availability of candidates for Senior Executive Service positions; and

(E) conducting an inventory of employee skills and addressing current and potential gaps in skills and the distribution of skills.

(3) **UPDATE OF AGENCY PLANS.**—Agency plans shall be updated at least every 2 years during the 10 years following enactment of this Act. An agency plan shall be reviewed by the Office of Personnel Management and, if determined to provide sufficient assurances, procedures, and commitments to provide adequate opportunities for the advancement and appointment of minorities, women, and individuals with disabilities to the Senior Executive Service, shall be approved by such Office. An agency may, in updating its plan, submit to the Office of Personnel Management an assessment of the impacts of the plan.

(b) **SUMMARY AND EVALUATION.**—Not later than 180 days after the deadline for the submission of any report or update under subsection (a), the Director shall transmit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report summarizing and evaluating the agency plans or updates (as the case may be) so submitted.

(c) **COORDINATION.**—The Office of Personnel Management shall, in carrying out subsection (a), evaluate existing requirements under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and determine how agency reporting can be performed so as to be consistent with, but not duplicative of, such sections and any other similar requirements.

By Mr. WYDEN:

S. 1181. A bill to provide for a demonstration project to examine whether community-level public health interventions can result in lower rates of chronic disease for individuals entering the Medicare program; to the Committee on Finance.

Mr. WYDEN. Mr. President, today I am introducing the Healthy Living, Healthy Aging Demonstration Project Act of 2009. This act will provide for a demonstration project to examine whether community-level public health interventions can result in lower rates of chronic disease for individuals who are about to enter the Medicare program. Prevention is a key to health at any age, but especially later in life. I

am proud to be introducing a cornerstone of health care reform today.

American people and the U.S. Government need this prevention act for two main reasons. Health care costs continue to rise exponentially and chronic diseases are the number one cause of death and disability in the U.S. One hundred thirty-three million Americans, representing 45 percent of the total population, have at least one chronic disease. Chronic diseases kill more than 1.7 million Americans each year, and are responsible for 7 out of every 10 deaths in the U.S. Furthermore, the vast majority of cases of chronic disease could be better prevented or managed.

The World Health Organization has estimated that if the major risk factors for chronic disease were eliminated, at least 80 percent of all heart disease, stroke, and type 2 diabetes would be prevented, and that more than 40 percent of cancer cases would be prevented. In addition, depressive disorders are common, chronic, and costly. The World Health Organization identified major depression as the fourth leading cause of worldwide disease in 1990, causing more disability than even certain types of heart disease. Research shows that mental health screenings after disease diagnosis for diabetic patients can be cost effective and improve health.

The Healthy Living, Healthy Aging Demonstration Project Act of 2009 will address these costly and chronic health problems before people enter the Medicare program. It calls for the Secretary of Health and Human Services to provide 5-year grants to community partnerships that include the state or local public health department and other community stakeholders such as health centers, providers, small businesses, and rural health clinics to fund evidence-based community-level prevention and wellness strategies. The types of community-based prevention strategies we are looking at in this program include walking programs, group exercise classes, anti-smoking programs, programs to highlight healthy dining options at restaurants, and expanding access to farmer's markets, nutritious foods, and other programs and services recommended by the Task Force on Community Preventive Services.

The Secretary, acting through the Administrator of the Centers for Medicare and Medicaid Services, CMS and in partnership with the Director of the Centers for Disease Control and Prevention, CDC would implement the demonstration program to test whether these public health interventions targeting 55-64 year olds result in lower rates of chronic disease and reduce costs for the Medicare program. One assessment level of the act will measure the effects of adopting healthy lifestyle strategies on specific individuals who enroll in prevention programs in their communities.

More specifically, program requirements in this act include an individual

health screening conducted by the state or local public health department or its designee. An individual health screening will include the appropriate test for diabetes, high blood pressure, high cholesterol, obesity, and tobacco use. Insured individuals who screen positive for chronic disease will be referred for treatment and for mental health screening and treatment to their existing providers or in-network providers. Individuals identified with chronic disease risk factors, such as high blood pressure or obesity, would be engaged in the community health interventions funded through the demonstration, such as walking programs, group exercise classes, or anti-smoking programs. Uninsured individuals who screen positive for chronic disease would be referred to the pre-selected clinical referral source for the demonstration site. Uninsured individuals who do not screen positive for chronic disease will receive information on healthy lifestyle choices and may also enroll in community level prevention interventions.

This program will not only conduct community-based prevention strategies, screenings and health assessments, but also help support follow-up care for uninsured individuals identified with chronic diseases, including determining eligibility for public programs.

I would like to thank Dr. Mary Polce-Lynch from Randolph-Macon College, who has been working in my office through the American Psychological Association and the American Association for the Advancement of Science, and Daniella Gratale from Trust for America's Health, for their work on this important prevention bill.

I urge all of my colleagues to support this important legislation to help Americans adopt the healthiest lifestyles possible and to prevent chronic diseases in later life.

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

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

S. 1181

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Healthy Living and Health Aging Demonstration Project Act of 2009".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Chronic diseases are the leading cause of death and disability in the United States. 7 in every 10 deaths are attributable to chronic disease, with more than 1,700,000 Americans dying each year. Approximately 133,000,000 Americans, representing 45 percent of the Nation's population, have at least 1 chronic disease.

(2) In 2007, the United States spent over \$2,200,000,000,000 on health care, with 75 cents out of every dollar spent going towards treatment of individuals with 1 or more chronic disease. In public programs, treatment for chronic diseases constitutes an

even higher percentage of total spending, with 83 cents of every dollar spent by Medicaid programs and more than 95 cents of every dollar spent by the Medicare program going towards costs related to chronic disease.

(3) Since 1987, the rate of obesity in the United States has doubled, accounting for a 20 to 30 percent increase in health care spending. Additionally, the percentage of young Americans who are overweight has tripled since 1980. If the prevalence of obesity was at the same level as it was in 1987, health care spending would be nearly 10 percent lower per person, for a total savings of nearly \$200,000,000,000.

(4) The vast majority of cases of chronic disease could be better prevented or managed. The World Health Organization has estimated that if the major risk factors for chronic diseases were eliminated, at least 80 percent of all cases of heart disease, stroke, and type 2 diabetes could be prevented, while also averting more than 40 percent of cancer cases.

(5) Depressive disorders are also becoming increasingly common, chronic, and costly. In 1990, the World Health Organization identified major depression as the fourth leading cause of disease worldwide, leading to more cases of disability than ischemic heart disease or cerebrovascular disease. Research has shown that mental health screenings following disease diagnosis for diabetic patients can improve health while remaining cost-effective.

(6) A report by the Trust for America's Health found that an annual investment of \$10 per person in proven community-based programs to increase physical activity, improve nutrition, and prevent tobacco use and smoking could, within 5 years, save the United States more than \$16,000,000,000 annually, with savings of more than \$5,000,000,000 for Medicare and \$1,900,000,000 for Medicaid, as well as over \$9,000,000,000 in savings for private health insurance payers.

SEC. 3. DEMONSTRATION PROJECT FOR COMMUNITY-LEVEL PUBLIC HEALTH INTERVENTIONS.

(a) DEFINITIONS.—In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Centers for Medicare & Medicaid Services.

(2) CHRONIC DISEASE OR CONDITION.—The term "chronic disease or condition" means diabetes, hypertension, pulmonary diseases (including asthma), hyperlipidemia, obesity, and any other disease or condition as determined by the Secretary of Health and Human Services.

(3) COMMUNITY-BASED PREVENTION AND INTERVENTION STRATEGY.—The term "community-based prevention and intervention strategy" means programs and services intended to prevent and reduce the incidence of chronic disease, including walking programs, group exercise classes, anti-smoking programs, healthy eating programs, increased access to nutritious and organic foods, programs and services that have been recommended by the Task Force on Community Preventive Services, and any programs or services that have been proposed by an eligible partnership and certified by the Director of the Centers for Disease Control and Prevention as evidence-based.

(4) DIRECTOR.—The term "Director" means the Director of the Centers for Disease Control and Prevention.

(5) MEDICARE.—The term "Medicare" means the program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) PRE-MEDICARE ELIGIBLE INDIVIDUAL.—The term "pre-Medicare eligible individual" means an individual who has attained age 55, but not age 65.

(7) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(8) STATE.—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Administrator and in consultation with the Director, shall establish a demonstration project under which eligible partnerships, as described in subsection (d)(1), are awarded grants to examine whether community-based prevention and intervention strategies, targeted towards pre-Medicare eligible individuals, result in—

(A) lower rates of chronic diseases and conditions after such individuals become eligible for benefits under Medicare; and

(B) lower costs under Medicare.

(2) FEDERAL AGENCY RESPONSIBILITIES.—

(A) CENTERS FOR MEDICARE & MEDICAID SERVICES.—The Administrator shall have primary responsibility for administering and evaluating the demonstration project established under this section.

(B) CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Director shall—

(i) certify that community-based prevention and intervention strategies proposed by eligible partnerships are evidence-based;

(ii) administer and provide grants for health screenings and risk assessments and community-based prevention and intervention strategies conducted by eligible partnerships; and

(iii) provide grants to designated clinical referral sites (as described in subsection (d)(1)(B)(i)(I)) for reimbursement of administrative costs associated with their participation in the demonstration project.

(c) DURATION AND SELECTION OF PARTNERSHIPS.—

(1) DURATION.—The demonstration project shall be conducted for a 5-year period, beginning not later than 2010.

(2) NUMBER OF PARTNERSHIPS.—The Administrator, in consultation with the Director, shall select not more than 6 eligible partnerships.

(3) SELECTION OF PARTNERSHIPS.—Eligible partnerships shall be selected by the Administrator in a manner that—

(A) ensures such partnerships represent racially, ethnically, economically, and geographically diverse populations, including urban, rural, and underserved areas; and

(B) gives priority to such partnerships that include employers (as described in subsection (d)(1)(C)).

(d) ELIGIBLE PARTNERSHIPS.—

(1) DESCRIPTION.—

(A) IN GENERAL.—Subject to subparagraph (C), for purposes of this section, an eligible partnership is a partnership that submits an approved application to participate in the demonstration project under this section and includes both of the entities described in subparagraph (B).

(B) REQUIRED ENTITIES.—An eligible partnership shall consist of a partnership between the following:

(i) A State or local public health department that shall—

(I) serve as the lead organization for the eligible partnership;

(II) develop appropriate community-based prevention and intervention strategies and present such strategies to the Director for certification; and

(III) administer certified community-based prevention and intervention strategies and conduct such strategies in association with local community organizations.

(ii) A medical facility as deemed appropriate by the Administrator, including health centers (as described under section 330 of the Public Health Service Act (42 U.S.C. 254b)) and rural health clinics (as described in section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2))), that shall—

(I) serve as the designated clinical referral site for medical services, as described in subsection (e)(4)(B)(i);

(II) provide assistance to the designated public health department with organization and administration of individual health screenings and risk assessments, as described in subsection (e)(3);

(III) collect payment for medical treatment and services that have been provided to individuals under the demonstration project in a manner that is consistent with State law and applicable clinic policy; and

(IV) provide mental health services or obtain an agreement with a designated mental health provider for referral and provision of such services.

(C) **OPTIONAL ENTITIES.**—An eligible partnership may include other organizations as practicable and necessary to assist in community outreach activities and to engage health care providers, insurers, employers, and other community stakeholders in meeting the goals of the demonstration project.

(2) **APPLICATIONS.**—An eligible partnership that desires to participate in the demonstration project shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

(e) **USE OF FUNDS.**—

(1) **IN GENERAL.**—An eligible partnership shall use funds received under this section to conduct community-based prevention and intervention strategies and health screenings and risk assessments for pre-Medicare eligible individuals from a diverse selection of ethnic backgrounds and income levels.

(2) **COMMUNITY-BASED PREVENTION AND INTERVENTION STRATEGY.**—An eligible partnership, acting through the State or local health department, shall promote healthy lifestyle choices among pre-Medicare eligible individuals by implementing and conducting a certified community-based prevention and intervention strategy that shall be made available to all such individuals.

(3) **INDIVIDUAL HEALTH SCREENINGS AND RISK ASSESSMENTS.**—An eligible partnership, acting through the State or local public health department (or an appropriately designated facility), shall agree to provide the following:

(A) **SCREENINGS FOR CHRONIC DISEASES AND CONDITIONS.**—Individual health screenings for chronic diseases or conditions, which shall include appropriate tests for—

- (i) diabetes;
- (ii) high blood pressure;
- (iii) high cholesterol;
- (iv) body mass index;
- (v) physical inactivity;
- (vi) poor nutrition;
- (vii) tobacco use; and
- (viii) any other chronic disease or condition as determined by the Director.

(B) **MENTAL HEALTH SCREENINGS.**—A mental health screening and, if appropriate, referral for additional mental health services, for any individual who has been screened and diagnosed with a chronic disease or condition.

(4) **CLINICAL TREATMENT FOR CHRONIC DISEASES.**—The eligible partnership shall agree to provide the following:

(A) **TREATMENT AND PREVENTION REFERRALS FOR INSURED INDIVIDUALS.**—To refer an individual determined to be covered under a health insurance program who has been screened and diagnosed with a chronic disease or chronic disease risk factors (including

high blood pressure, high cholesterol, obesity, or tobacco use)—

(i) to a provider under such program for further medical or mental health treatment; and

(ii) for enrollment in an appropriate community-based prevention and intervention strategy program.

(B) **TREATMENT AND PREVENTION REFERRALS FOR UNINSURED INDIVIDUALS.**—To refer an individual determined to be without coverage under a health insurance program who has been screened and diagnosed with a chronic disease or chronic disease risk factors (including high blood pressure, high cholesterol, obesity, or tobacco use) to the designated clinical referral site—

(i) for determination of eligibility for public health programs, or appropriate treatment (including mental health services) pursuant to the facility's existing authority and funding and in accordance with applicable fees and payment collection as described in subsection (d)(1)(B)(ii)(III); and

(ii) for enrollment in an appropriate community-based prevention and intervention strategy program.

(C) **HEALTHY INDIVIDUALS.**—To provide an individual who is not diagnosed with a chronic disease and does not exhibit any chronic disease risk factors with appropriate information on healthy lifestyle choices and available community-based prevention and intervention strategy programs.

(5) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as entitling an individual who participates in the demonstration project to benefits under Medicare.

(f) **MONITORING.**—The Secretary shall develop and administer a program to evaluate the effectiveness of the demonstration project by collecting the following:

(1) **HEALTH RISK ASSESSMENT RESULTS.**—Each eligible partnership shall maintain records of medical information and results obtained during each individual's health screening and risk assessment to establish baseline data for continued monitoring and assessment of such individuals.

(2) **MEDICARE EXAMINATION RESULTS.**—The Secretary shall collect medical information obtained during the initial preventive physical examination under Medicare (as defined in section 1861(wv) of the Social Security Act (42 U.S.C. 1395x(wv))) for those individuals who received health screenings and risk assessments through the demonstration project.

(g) **EVALUATION.**—

(1) **INDEPENDENT RESEARCH.**—The Secretary, in consultation with the Director and the Administrator, shall enter into a contract with an independent entity or organization that has demonstrated—

(A) prior experience in population-based assessment of public health interventions designed to prevent or treat chronic diseases and conditions; and

(B) knowledge and prior study of the general health and lifestyle behaviors of pre-Medicare eligible individuals.

(2) **EVALUATION DESIGNS.**—The entity or organization selected by the Secretary under paragraph (1) shall, using the information and data collected pursuant to subsection (f), conduct an assessment of the demonstration project through—

(A) a population-based design that compares those populations targeted under the demonstration project with a matched control group; and

(B) a pre-post design that measures changes in health indicators (including improved diet or increased physical activity) and health outcomes in the targeted populations for those individuals who participated in individual health risk assessments and, prior to completion of the demonstra-

tion project, became eligible for benefits under Medicare.

(h) **REPORTING.**—

(1) **PROGRESS REPORT.**—Not later than 3 years after implementation of the demonstration project, the Secretary shall prepare and submit a report on the status of the project to Congress, including—

(A) the progress and results of any activities conducted under the demonstration project; and

(B) identification of health indicators (such as improved diet or increased physical activity) that have been determined to be associated with controlling or reducing the level of chronic disease for pre-Medicare eligible individuals.

(2) **FINAL REPORT.**—Not later than 18 months after completion of the demonstration project, the Secretary shall prepare and submit a final report and evaluation of the project to Congress, including—

(A) the results of the assessment conducted under subsection (g)(2);

(B) a description of community-based prevention and intervention strategies that have been determined to be effective in controlling or reducing the level of chronic disease for pre-Medicare eligible individuals;

(C) calculation of potential savings under Medicare based upon a comparison of chronic disease rates between the populations targeted under the demonstration project and the matched control group; and

(D) recommendations for such legislation and administrative action as the Secretary determines appropriate.

(i) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out the demonstration project established under this section, there is authorized to be appropriated \$200,000,000 for the period of fiscal years 2010 through 2016.

By Mr. DURBIN (for himself and Mr. BROWNBACK):

S. 1183. A bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes; to the Committee on Foreign Relations.

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

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

S. 1183

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Haiti Reforestation Act of 2009".

SEC. 2. FINDINGS; PURPOSE.

(a) **FINDINGS.**—Congress finds that—

(1) the established policy of the Federal Government is to support and seek protection of tropical forests around the world;

(2) tropical forests provide a wide range of benefits by—

(A) harboring a major portion of the biological and terrestrial resources of Earth and providing habitats for an estimated 10,000,000 to 30,000,000 plant and animal species, including species essential to medical research and agricultural productivity;

(B) playing a critical role as carbon sinks that reduce greenhouse gases in the atmosphere, as 1 hectare of tropical forest can absorb up to approximately 3 tons of carbon dioxide per year, thus moderating potential global climate change; and

(C) regulating hydrological cycles upon which agricultural and coastal resources depend;

(3) tropical forests are also a key factor in reducing rates of soil loss, particularly on hilly terrain;

(4) while international efforts to stem the tide of tropical deforestation have accelerated during the past 2 decades, the rapid rate of tropical deforestation continues unabated;

(5) in 1923, over 60 percent of the land of Haiti was forested but, by 2006, that percentage had decreased to less than 2 percent;

(6) during the period beginning in 2000 and ending in 2005, the deforestation rate in Haiti accelerated by more than 20 percent over the deforestation rate in Haiti during the period beginning in 1990 and ending in 1999;

(7) as a result, during the period described in paragraph (6), Haiti lost—

(A) nearly 10 percent (approximately 11,000 hectares) of the forest cover of Haiti; and

(B) approximately 22 percent of the total forest and woodland habitat of Haiti;

(8) poverty and economic pressures are—

(A) two factors that underlie the tropical deforestation of Haiti; and

(B) manifested particularly through the clearing of vast areas of forest for conversion to agricultural uses;

(9) the unemployment rate of Haiti is approximately 80 percent;

(10) the per capita income of Haiti is \$450 per year, which is barely one-tenth of the per capita income of Latin America and the Caribbean;

(11) two-thirds of the population of Haiti depend on the agricultural sector, which consists mainly of small-scale subsistence farming;

(12) 60 percent of the population of Haiti relies on charcoal produced from cutting down trees for cooking fuel;

(13) soil erosion represents the most direct effect of the deforestation of Haiti, as the erosion has—

(A) lowered the productivity of the land due to the poor soils underlying the tropical forests;

(B) worsened the severity of droughts;

(C) led to further deforestation;

(D) significantly decreased the quality and, as a result, quantity of freshwater and clean drinking water available to the population of Haiti; and

(E) increased the pressure on the remaining land and trees in Haiti;

(14) tropical forests provide forest cover to soften the effect of heavy rains and reduce erosion by anchoring the soil with their roots;

(15) when trees are cleared, rainfall runs off the soil more quickly and contributes to floods and further erosion;

(16) in 2004, Hurricane Jeanne struck Haiti, killing approximately 3,000, and affecting over 200,000, people, partly because deforestation had resulted in the clearing of large hillsides, which enabled rainwater to run off directly to settlements located at the bottom of the slopes;

(17) research conducted by the United Nations Environmental Programme has revealed a direct (89 percent) correlation between the extent of the deforestation of a country and the incidence of victims per weather event in the country;

(18) finding economic benefits for local communities from sustainable uses of tropical forests is critical for the long-term protection of the tropical forests in Haiti; and

(19) tropical reforestation efforts would provide new sources of jobs, income, and investments in Haiti by—

(A) providing employment opportunities in tree seedling programs, contract tree planting and management, sustainable agricultural initiatives, sustainable and managed timber harvesting, and wood products milling and finishing services; and

(B) enhancing community enterprises that generate income through the trading of sustainable forest resources, many of which exist on small scales in Haiti and in the rest of the region.

(b) **PURPOSE.**—The purpose of this Act is to provide assistance to the Government of Haiti to develop and implement, or improve, nationally appropriate policies and actions—

(1) to reduce deforestation and forest degradation in Haiti; and

(2) to increase annual rates of afforestation and reforestation in a measurable, reportable, and verifiable manner—

(A) to eliminate within 5 years after the date of enactment of this Act any further net deforestation of Haiti; and

(B) to restore within 30 years after the date of enactment of this Act the forest cover of Haiti to the surface area that the forest cover had occupied in 1990.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the United States Agency for International Development.

(2) **AFFORESTATION.**—

(A) **IN GENERAL.**—The term “afforestation” means the establishment of a new forest through the seeding of, or planting of trees on, a parcel of nonforested land.

(B) **INCLUSION.**—The term “afforestation” includes the introduction of a tree species to a parcel of nonforested land of which the species is not a native species.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

TITLE I—FORESTATION ASSISTANCE TO GOVERNMENT OF HAITI

SEC. 101. FORESTATION ASSISTANCE.

(a) **AUTHORITY OF SECRETARY.**—

(1) **IN GENERAL.**—In accordance with paragraph (2), the Secretary, in consultation with the Administrator, may offer to enter into agreements with the Government of Haiti to provide financial assistance, technology transfers, or capacity building assistance for the conduct of activities to develop and implement 1 or more forestation proposals under paragraph (2)—

(A) to reduce the deforestation of Haiti; and

(B) to increase the rates of afforestation and reforestation in Haiti.

(2) **PROPOSALS.**—

(A) **IN GENERAL.**—To be eligible for assistance under paragraph (1), the Government of Haiti shall submit to the Secretary 1 or more proposals that contain—

(i) a description of each policy and initiative to be carried out using the assistance; and

(ii) adequate documentation to ensure, as determined by the Secretary, that—

(I) each policy and initiative will be—

(aa) carried out and managed in accordance with widely-accepted environmentally sustainable forestry and agricultural practices; and

(bb) designed and implemented in a manner by which to improve the governance of forests by building governmental capacity to be more transparent, inclusive, accountable, and coordinated in decisionmaking processes and the implementation of the policy or initiative; and

(II) the Government of Haiti will establish and enforce legal regimes, standards, and safeguards—

(aa) to prevent violations of human rights and the rights of local communities and indigenous people;

(bb) to prevent harm to vulnerable social groups; and

(cc) to ensure that members of local communities and indigenous people in affected areas, as partners and primary stakeholders, will be engaged in the design, planning, implementation, monitoring, and evaluation of the policies and initiatives.

(B) **DETERMINATION OF COMPATIBILITY WITH CERTAIN PROGRAMS.**—In evaluating each proposal under subparagraph (A), the Secretary shall ensure that each policy and initiative described in the proposal submitted by the Government of Haiti under that subparagraph is compatible with—

(i) broader development, poverty alleviation, and natural resource conservation objectives and initiatives in Haiti; and

(ii) the development, poverty alleviation, disaster risk management, and climate resilience programs of the Department of Agriculture.

(b) **ELIGIBLE ACTIVITIES.**—Any assistance received by the Government of Haiti under subsection (a)(1) shall be used to implement a proposal developed under subsection (a)(2), which may include—

(1) the provision of technologies and associated support for activities to reduce deforestation or increase afforestation and reforestation rates, including—

(A) fire reduction initiatives;

(B) forest law enforcement initiatives;

(C) the development of timber tracking systems;

(D) the development of cooking fuel substitutes;

(E) initiatives to increase agricultural productivity;

(F) tree-planting initiatives; and

(G) programs that are designed to focus on market-based solutions, including programs that leverage the international carbon-offset market;

(2) the enhancement and expansion of governmental and nongovernmental institutional capacity to effectively design and implement a proposal developed under subsection (a)(2) through initiatives, including—

(A) the establishment of transparent, accountable, and inclusive decisionmaking processes relating to all stakeholders (including affected local communities);

(B) the promotion of enhanced coordination among ministries and agencies responsible for agroecological zoning, mapping, land planning and permitting, sustainable agriculture, forestry, and law enforcement; and

(C) the clarification of land tenure and resource rights of affected communities, including local communities and indigenous peoples; and

(3) the development and support of institutional capacity to measure, verify, and report the activities carried out by the Government of Haiti to reduce deforestation and increase afforestation and reforestation rates through the use of appropriate methods, including—

(A) the use of best practices and technologies to monitor any change in the forest cover of Haiti;

(B) the monitoring of the impacts of policies and initiatives on—

(i) affected communities;

(ii) the biodiversity of the environment of Haiti; and

(iii) the health of the tropical forests of Haiti; and

(C) independent and participatory forest monitoring.

(c) DEVELOPMENT OF PERFORMANCE METRICS.—

(1) IN GENERAL.—If the Secretary provides assistance under subsection (a)(1), in accordance with paragraph (2), the Secretary, in cooperation with the Government of Haiti and, if necessary, in consultation with the Administrator, shall develop appropriate performance metrics to measure, verify, and report—

(A) the conduct of each policy and initiative to be carried out by the Government of Haiti;

(B) the results of each policy and initiative with respect to the tropical forests of Haiti; and

(C) each impact of each policy and initiative on the local communities and indigenous people of Haiti.

(2) REQUIREMENTS.—Performance metrics developed under paragraph (1) shall, to the maximum extent practicable, include short-term and long-term metrics to evaluate the implementation of each policy and initiative contained in each proposal developed under subsection (a)(2).

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report that describes the actions that the Secretary has taken, and plans to take—

(A) to engage with the Government of Haiti, nongovernmental stakeholders, and public and private nonprofit organizations to implement this section; and

(B) to enter into agreements with the Government of Haiti under subsection (a)(1).

(2) BIENNIAL REPORTS.—Not later than 2 years after the date on which the Secretary first provides assistance to the Government of Haiti under subsection (a)(1) and biennially thereafter, the Secretary shall submit to Congress a report that describes the progress of the Government of Haiti in implementing each policy and initiative contained in the proposal submitted under subsection (a)(2).

(e) ADDITIONAL ASSISTANCE.—The Secretary may provide financial and other assistance to nongovernmental stakeholders to ensure—

(1) the access by local communities and indigenous people to information relating to each policy and initiative to be carried out by the Government of Haiti through funds made available under subsection (a)(1); and

(2) that the groups described in paragraph (1) have an appropriate opportunity to participate effectively in the design, implementation, and independent monitoring of each policy and initiative.

(f) NONGOVERNMENTAL ORGANIZATION.—At the election of the Government of Haiti, or on the determination of the Secretary, in cooperation with the Government of Haiti, the Government of Haiti may enter into an agreement with a private, nongovernmental conservation organization authorizing the organization to act on behalf of the Government of Haiti for the purposes of this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

TITLE II—GRANTS FOR REFORESTATION

SEC. 201. REFORESTATION GRANT PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Administrator, shall establish a grant program to carry out the purposes of this Act, including reversing deforestation and improving reforestation and afforestation in Haiti.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants and contracts to public

and private nonprofit organizations to carry out projects that, in the aggregate, reverse deforestation and improve reforestation and afforestation.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not award a grant under this section in an amount greater than \$500,000 per year.

(B) EXCEPTION.—The Secretary may award a grant under this section in an amount greater than \$500,000 per year if the Secretary determines that the recipient of the grant has demonstrated success with respect to a project that was the subject of a grant under this section.

(3) DURATION.—The Secretary shall award grants under this section for a period not to exceed 3 years.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded pursuant to subsection (b) may be used for activities such as—

(A) providing a financial incentive to protect trees;

(B) providing hands-on management and oversight of replanting efforts;

(C) focusing on sustainable income-generating growth;

(D) providing seed money to start cooperative reforestation and afforestation efforts and providing subsequent conditional funding for such efforts contingent upon required tree care and maintenance activities;

(E) promoting widespread use of improved cooking stove technologies and the development of liquid biofuels, to the extent that neither results in the harvesting of tropical forest growth; and

(F) securing the involvement and commitment of local communities and indigenous peoples—

(i) to protect tropical forests in existence as of the date of enactment of this Act; and

(ii) to carry out afforestation and reforestation activities.

(2) CONSISTENCY WITH PROPOSALS.—To the maximum extent practicable, a project carried out using grant funds shall support and be consistent with the proposal developed under section 101(a)(2) that is the subject of the project.

(d) APPLICATION.—

(1) IN GENERAL.—To be eligible for a grant under this section, an entity shall prepare and submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) CONTENT.—Each application submitted under paragraph (1) shall include—

(A) a description of the objectives to be attained;

(B) a description of the manner in which the grant funds will be used;

(C) a plan for evaluating the success of the project based on verifiable evidence; and

(D) to the extent that the applicant intends to use nonnative species in afforestation efforts, an explanation of the benefit of the use of nonnative species over native species.

(3) PREFERENCE FOR CERTAIN PROJECTS.—In awarding grants under this section, the Secretary shall give preference to applicants that propose—

(A) to develop market-based solutions to the difficulty of reforestation in Haiti, including the use of conditional cash transfers and similar financial incentives to protect reforestation efforts;

(B) to partner with local communities and cooperatives; and

(C) to focus on efforts that build local capacity to sustain growth after the completion of the underlying grant project.

(e) DISSEMINATION OF INFORMATION.—The Secretary shall collect and widely disseminate

information about the effectiveness of the demonstration projects assisted under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 202. FOREST PROTECTION GRANTS.

Chapter 7 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2281 et seq.) is amended by inserting after section 466 the following new section:

“SEC. 467. PILOT PROGRAM FOR HAITI.

“(a) SUBMISSION OF LIST OF AREAS OF SERIOUSLY DEGRADED NATURAL RESOURCES.—The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the Government of Haiti to submit a list of areas within the territory of Haiti in which tropical forests are seriously degraded or threatened.

“(b) REVIEW OF LIST.—The Administrator shall assess the list submitted by the Government of Haiti under subsection (a) and shall seek to reach agreement with the Government of Haiti for the restoration and future sustainable use of those areas.

“(c) GRANT PROGRAM.—

“(1) GRANTS AUTHORIZED.—The Administrator of the Agency for International Development is authorized to make grants, in consultation with the International Forestry Division of the Department of Agriculture and on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of the Government of Haiti in exchange for commitments by the Government of Haiti to restore tropical forests identified by the Government under subsection (a) or for commitments to develop plans for sustainable use of such tropical forests.

“(2) MANAGEMENT OF PROTECTED AREAS.—Each recipient of a grant under this subsection shall participate in the ongoing management of the area or areas protected pursuant to such grant.

“(3) RETENTION OF PROCEEDS.—Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in section (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”.

By Mr. BINGAMAN:

S. 1185. A bill to amend titles XVIII and XIX of the Social Security Act to ensure that Low-income beneficiaries have improved access to health care under the Medicare and Medicaid programs; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Medicare Financial Stability for Beneficiaries Act of 2009.

This legislation would ensure that low-income Medicare beneficiaries can access the benefits to which they are entitled through one of the Medicare Savings Programs, MSP, and/or the Part D Low-Income Subsidy, LIS.

More than 13 million Medicare beneficiaries have incomes below 150 percent of the Federal Poverty Level,

FPL, and are eligible for assistance with their Medicare costs. Another 6 million have incomes under 200 percent FPL. These nearly 20 million beneficiaries are poorer than other Medicare beneficiaries. They also tend to be sicker, more isolated and have limited educations. These populations are more in need of medical and other health-related services, and they benefit in both access and health outcomes from financial assistance with their out-of-pocket costs.

Although seniors and younger people with disabilities would benefit tremendously from greater access to needed health care services and financial savings, the Congressional Budget Office has estimated that about 67 percent to 87 percent of individuals eligible for various MSP services do not receive benefits. Additionally, the Centers for Medicare & Medicaid Services state that more than 13 million individuals are eligible for Part D LIS but only about 9 million are enrolled. Most of those 9 million get the subsidy automatically without having to apply, due to their eligibility for other programs.

The lives of low-income beneficiaries would improve significantly with improved access to the financial assistance provided by these important programs. Barriers to enrollment in MSP and LIS include: lack of effective outreach, lack of knowledge of the programs, language issues, social and physical isolation, restrictive assets limits, income and asset documentation complexities, and other daunting application requirements. Another major barrier is the lack of alignment of eligibility rules and application processes between MSP and LIS, although both programs serve the same general population.

The Medicare Financial Stability for Beneficiaries Act of 2009 decreases these barriers through:

1. Stabilizing programs by eliminating the recurring short-term re authorizations of one of the MSPs—the Qualified Individual, QI, program and the roller-coaster eligibility/loss of eligibility some beneficiaries face due to the effects of the subsidies on eligibility for other benefits.

2. Increasing access to financial assistance for low-income beneficiaries. Research supports the conclusion that financial assistance results in greater access and better health outcomes for low-income beneficiaries. Currently full assistance is available only for those beneficiaries with incomes up to 135 percent of the Federal Poverty Level, 135 percent FPL is \$1218/month for an individual, and very limited assets, about \$8,000 for an individual; much more limited assistance is available for those with incomes up to 150 percent of FPL. People with low incomes but some savings may be disqualified altogether. Our bill increases income eligibility to 150 percent of FPL for full benefits and 200 percent FPL for partial benefits and uses a single asset standard for all programs of

\$27,500 for an individual. Increasing the asset test for both MSP and LIS and increasing income eligibility levels will improve health outcomes for millions more seniors and younger people with disabilities.

3. Aligning the rules for MSP and LIS programs and authorizing cross-deeming so that qualifying for one program would automatically qualify an individual for the other programs. Currently, income and asset eligibility rules for MSP and LIS are similar, but not identical. Individuals eligible for MSP benefits are deemed eligible for LIS, without having to apply or take any other action. The reverse, however, is not true. Greater alignment of the rules of both programs makes cross-deeming sensible, and ensures that individuals will receive both benefits regardless of where they first seek assistance. The legislation will also assist LIS beneficiaries in receiving Supplemental Nutritional Assistance Program, SNAP, food stamp, and vice versa.

4. Simplifying outreach and enrollment for low-income Medicare programs by authorizing the Social Security Administration to have access to Internal Revenue Service records to identify potentially eligible beneficiaries; by making more materials, including applications, available in additional languages; and by other simplifications of the application process. These provisions will benefit the millions of Americans who desperately need assistance, and will cut down on unnecessary and duplicative work for the Social Security Administration and for State Medicaid agencies.

There is strong support for this important legislation from many organizations including the American Association of Retired Persons, National Senior Citizens Law Center, Medicare Rights Center, Center for Medicare Advocacy, Inc, Families USA, National Council on Aging, National Patient Advocate Foundation, American Federation of Labor and Congress of Industrial Organizations, AFL-CIO, and the National Committee to Preserve Social Security and Medicare.

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

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

S. 1185

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 “Medicare Financial Stability for Beneficiaries Act of 2009”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Eligibility for other programs.

Sec. 3. Cost-sharing protections for low-income subsidy-eligible individuals.

Sec. 4. Modification of resource standards for determination of eligibility for LIS; no consideration of pension or retirement plan in determination of resources.

Sec. 5. Increase in income levels for eligibility.

Sec. 6. Effective date of MSP benefits.

Sec. 7. Expanding special enrollment process to individuals eligible for an income-related subsidy.

Sec. 8. Enhanced cost-sharing protections for full-benefit dual eligible individuals and qualified medicare beneficiaries.

Sec. 9. Two-way deeming between Medicare Savings Program and Low-Income Subsidy Program.

Sec. 10. Improving linkages between health programs and snap.

Sec. 11. Expediting low-income subsidies under the Medicare prescription drug program.

Sec. 12. Enhanced oversight and enforcement relating to reimbursements for retroactive LIS enrollment.

Sec. 13. Intelligent assignment in enrollment.

Sec. 14. Medicare enrollment assistance.

Sec. 15. QMB buy-in of part A and part B premiums.

Sec. 16. Increasing availability of MSP applications through availability on the internet and designation of preferred language.

Sec. 17. State Medicaid agency consideration of low-income subsidy application and data transmittal.

SEC. 2. ELIGIBILITY FOR OTHER PROGRAMS.

(a) LIS.—Section 1860D-14(a)(3) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)), as amended by section 116 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (F)” and inserting “subparagraphs (F) and (H)”; and

(2) by adding at the end the following new subparagraph:

“(H) DISREGARD OF PREMIUM AND COST-SHARING SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium or cost-sharing subsidy with respect to a subsidy-eligible individual under this section shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof.”.

(b) MSP.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

“(6) Notwithstanding any other provision of law, any medical assistance for some or all medicare cost-sharing under this title shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to eligibility for benefits on or after January 1, 2010.

SEC. 3. COST-SHARING PROTECTIONS FOR LOW-INCOME SUBSIDY-ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)) is amended—

(1) in paragraph (1)(D), by adding at the end the following new clause:

“(iv) OVERALL LIMITATION ON COST-SHARING.—In the case of all such individuals, a limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income.”; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

“(F) OVERALL LIMITATION ON COST-SHARING.—A limitation on aggregate cost-sharing under this part for a year not to exceed 2.5 percent of income.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply as of January 1, 2010.

SEC. 4. MODIFICATION OF RESOURCE STANDARDS FOR DETERMINATION OF ELIGIBILITY FOR LIS; NO CONSIDERATION OF PENSION OR RETIREMENT PLAN IN DETERMINATION OF RESOURCES.

(a) ELIMINATING THE BIFURCATION OF RESOURCE STANDARDS.—

(1) IN GENERAL.—Section 1860D-14(a)(3)(A)(iii) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(A)(iii)) is amended by striking “meets the” and all that follows through the period at the end and inserting “meets—

“(I) in the case of determinations made before January 1, 2011, the resource requirement described in subparagraph (D) or (E); and

“(II) in the case of determinations made on or after January 1, 2011, the resource requirement described in subparagraph (E).”.

(2) CONFORMING AMENDMENT.—Section 1860D-14(a)(3)(D)(ii) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(D)(ii)) is amended by inserting “(before 2011)” after “a subsequent year”.

(b) INCREASING THE APPLICABLE RESOURCE STANDARD.—Section 1860D-14(a)(3)(E) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(E)(i)) is amended—

(1) in the heading, by striking “ALTERNATIVE” and inserting “APPLICABLE”;

(2) in clause (i)—

(A) in subclause (I), by striking “and” at the end;

(B) in subclause (II)—

(i) by inserting “(before 2011)” after “a subsequent year”;

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

(iii) by inserting before the flush sentence at the end the following new subclauses:

“(III) for 2011, \$27,500 (or \$55,000 in the case of the combined value of the individual’s assets or resources or the assets or resources of the individual’s spouse); and

“(IV) for a subsequent year the dollar amounts specified in this subclause (or subclause (III)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.”; and

(C) in the flush sentence at the end, by inserting “or (IV)” after “subclause (II)”.

(c) EXCLUSION OF PENSION AND RETIREMENT BENEFITS FROM RESOURCES.—

(1) IN GENERAL.—Section 1860D-14(a)(3) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)), as amended by section 2, is amended—

(A) in subparagraph (E)(i), in the matter preceding subclause (I), by inserting “and the pension or retirement plan exclusion provided under subparagraph (I)” after “(G)”;

(B) by adding at the end the following new subparagraph:

“(I) PENSION AND RETIREMENT BENEFITS EXCLUSION.—In determining the resources of an individual (and the eligible spouse of the individual, if any) under section 1613 for pur-

poses of subparagraph (E) no balance in, or benefits received under, an employee pension benefit plan (as defined in section 3 of the Employee Retirement Income Security Act of 1974) shall be taken into account.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to determinations made on or after January 1, 2011.

(d) APPLICATION OF APPLICABLE RESOURCE STANDARD UNDER MEDICARE SAVINGS PROGRAM AND EXEMPTIONS FROM INCOME AND RESOURCES.—

(1) APPLICATION OF APPLICABLE RESOURCE STANDARD AND EXEMPTIONS FROM RESOURCES.—Section 1905(p)(1)(C) of the Social Security Act (42 U.S.C. 1396d(p)(1)(C)) is amended—

(A) by inserting “without taking into account any part of the value of any life insurance policy or any balance in, or benefits received under, an employee pension benefit plan (as defined in section 3 of the Employee Retirement Income Security Act of 1974)” after “(as so determined)”;

(B) by striking “subparagraph (D)” and all that follows through “section)” and inserting “section 1860D-14(a)(3)(E)”.

(2) EXEMPTION OF IN-KIND SUPPORT AND MAINTENANCE.—

(A) IN GENERAL.—Section 1905(p)(1)(B) of the Social Security Act (42 U.S.C. 1396d(p)(1)(B)) is amended by inserting “and except that support and maintenance furnished in kind shall not be counted as income” after “(2)(D)”.

(B) CONFORMING AMENDMENT.—Section 1860D-14(a)(3)(C)(i) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(C)(i)) is amended by striking “and except that support and maintenance furnished in kind shall not be counted as income”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to determinations made on or after January 1, 2011.

(e) CLARIFICATION RELATING TO INCLUDING RETIREMENT BENEFITS AS INCOME.—Nothing in subparagraph (I) of section 1860D-14(a)(3) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)), as added by subsection (c)(1), or section 1905(p)(1)(C) of such Act (42 U.S.C. 1396d(p)(1)(C)), as amended by subsection (d)(1), shall be construed as affecting the inclusion of retirement benefits as income under section 1612(a)(2)(B) of such Act (42 U.S.C. 1382a(a)(2)(B)).

SEC. 5. INCREASE IN INCOME LEVELS FOR ELIGIBILITY.

(a) LIS.—

(1) IN GENERAL.—Section 1860D-14(a) of the Social Security Act (42 U.S.C. 1395w-114(a)) is amended—

(A) in the subsection heading, by striking “150” and inserting “200”;

(B) in paragraph (1)—

(i) in the heading, by striking “135” and inserting “150”;

(ii) in the matter preceding subparagraph (A), by striking “135” and inserting “150”;

(C) in paragraph (2)—

(i) in the heading, by striking “150” and inserting “200”;

(ii) in subparagraph (A)—

(i) by striking “135” and inserting “150”;

(ii) by striking “150” and inserting “200”;

(D) in paragraph (3)(A)(ii), by striking “150” and inserting “200”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to determinations made on or after January 1, 2011.

(b) MSP.—

(1) INCREASE TO 150 PERCENT OF FPL FOR QUALIFIED MEDICARE BENEFICIARIES.—

(A) IN GENERAL.—Section 1905(p)(2) of the Social Security Act (42 U.S.C. 1396d(p)(2)) is amended—

(i) in subparagraph (A), by striking “100 percent” and inserting “150 percent”;

(ii) in subparagraph (B)—

(I) by striking “and” at the end of clause (ii);

(II) by striking the period at the end of clause (ii) and inserting “, and”;

(III) by adding at the end the following:

“(iv) January 1, 2011, is 150 percent.”; and

(iii) in subparagraph (C)—

(I) by striking “and” at the end of clause (iii);

(II) by striking the period at the end of clause (iv) and inserting “, and”;

(III) by adding at the end the following:

“(v) January 1, 2011, is 150 percent.”.

(B) APPLICATION OF INCOME TEST BASED ON FAMILY SIZE.—Section 1905(p)(2)(A) of such Act (42 U.S.C. 1396d(p)(2)(A)) is amended by adding at the end the following: “For purposes of this subparagraph, family size means the applicant, the spouse (if any) of the applicant if living in the same household as the applicant, and the number of individuals who are related to the applicant (or applicants), who are living in the same household as the applicant (or applicants), and who are dependent on the applicant (or the applicant’s spouse) for at least one-half of their financial support.”.

(2) EXPANSION OF SPECIFIED LOW-INCOME MEDICARE BENEFICIARY (SLMB) PROGRAM.—

(A) ELIGIBILITY OF INDIVIDUALS WITH INCOMES BELOW 200 PERCENT OF FPL.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)) is amended—

(i) by adding “and” at the end of clause (ii);

(ii) in clause (iii)—

(I) by striking “and 120 percent in 1995 and years thereafter” and inserting “, or 120 percent in 1995 and any succeeding year before 2011, or 200 percent beginning in 2011”; and

(II) by striking “and” at the end; and

(iii) by striking clause (iv).

(B) REVISION TO DESCRIPTION.—Section 1902(a)(10)(E)(iii) of the Social Security Act (42 U.S.C. 1396b(a)(10)(E)(iii)) is amended by striking “who would be qualified medicare” and all that follows through “but is less than” and inserting “whose income (as determined in accordance with subparagraphs (B) and (C) of section 1905(p)(1)) is less than”.

(C) REFERENCES.—Section 1905(p)(1) of such Act (42 U.S.C. 1396d(p)(1)) is amended by adding at and below subparagraph (C) the following: “The term ‘specified low-income medicare beneficiary’ means an individual described in section 1902(a)(10)(E)(iii).”.

(3) PROVIDING 100 PERCENT FEDERAL FINANCING.—The third sentence of section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by inserting before the period at the end the following: “, with respect to medical assistance for medicare cost-sharing provided under clause (i) of section 1902(a)(10)(E) for individuals with incomes greater than 100 percent of the official poverty line described in subsection (p)(2)(A) and less than or equal to 150 percent of such official poverty line, and with respect to medical assistance for medicare cost-sharing provided under clause (iii) of such section”.

(4) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on January 1, 2011, and, with respect to title XIX of the Social Security Act, shall apply to calendar quarters beginning on or after January 1, 2011.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection,

the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6. EFFECTIVE DATE OF MSP BENEFITS.

(a) IN GENERAL.—

(1) EFFECTIVE DATE OF MSP BENEFITS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended, in the matter preceding paragraph (1), by striking “assistance or, in the case of medicare cost-sharing” and all that follows through “beneficiary)” and inserting “assistance”).

(2) CONFORMING AMENDMENTS.—(A) Section 1902(e)(8) of the Social Security Act (42 U.S.C. 1396a(e)(8)) is amended by striking the first sentence.

(B) Section 1848(g)(3) of such Act (42 U.S.C. 1395w-4(g)(3)) is amended by adding at the end the following new subparagraph:

“(C) TREATMENT OF RETROACTIVE ELIGIBILITY.—In the case of an individual who is determined to be eligible for medical assistance described in subparagraph (A) retroactively, the Secretary shall provide a process whereby claims which are submitted for services furnished during the period of retroactive eligibility and during a month in which the individual otherwise would have been eligible for such assistance and which were not submitted in accordance with such subparagraph are resubmitted and reprocessed in accordance with such subparagraph.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2010, but shall not result in eligibility for benefits for medicare cost-sharing for months before January 2010.

SEC. 7. EXPANDING SPECIAL ENROLLMENT PROCESS TO INDIVIDUALS ELIGIBLE FOR AN INCOME-RELATED SUBSIDY.

(a) IN GENERAL.—Section 1860D-1(b)(1)(C) of the Social Security Act (42 U.S.C. 1395w-101(b)(1)(C)) is amended—

(1) by striking “a full-benefit dual eligible individual (as defined in section 1935(c)(6))” and inserting “a subsidy-eligible individual (as defined in section 1860D-14(a)(3))”; and

(2) by striking “1860D-14(a)(1)(A)” and inserting “subsection (a)(1)(A) or (b)(1)(A) of section 1860D-14, as applicable”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to enrollments on or after January 1, 2010.

SEC. 8. ENHANCED COST-SHARING PROTECTIONS FOR FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS AND QUALIFIED MEDICARE BENEFICIARIES.

(a) ELIMINATION OF PART D COST-SHARING FOR CERTAIN NON-INSTITUTIONALIZED FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—Section 1860D-14(a)(1)(D)(i) of the Social Security Act (42 U.S.C. 1395w-114(a)(1)(D)(i)) is amended—

(1) in the heading, by striking “INSTITUTIONALIZED INDIVIDUALS.—In” and inserting “ELIMINATION OF COST-SHARING FOR CERTAIN FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS.—

“(I) INSTITUTIONALIZED INDIVIDUALS.—In”;

and

(2) by adding at the end the following new subclause:

“(II) CERTAIN OTHER INDIVIDUALS.—In the case of an individual who is a full-benefit dual eligible individual who is receiving home and community based care (whether under section 1915 or under a waiver under section 1115), the elimination of any bene-

ficiary coinsurance described in section 1860D-2(b)(2) (for all amounts through the total amount of expenditures at which benefits are available under section 1860D-2(b)(4)).”.

(b) REPEAL OF AUTHORITY FOR STATES TO PAY MEDICARE COST-SHARING AT MEDICAID RATES AND PROVISION OF MEDICAL ASSISTANCE TO DUAL ELIGIBLES IN MA PLANS.—

(1) REPEAL OF AUTHORITY FOR STATES TO PAY MEDICARE COST-SHARING AT MEDICAID RATES.—Section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)) is amended—

(A) by striking paragraph (2);

(B) by redesignating paragraph (3) as paragraph (2);

(C) in paragraph (2), as redesignated by subparagraph (B)—

(i) in the matter preceding subparagraph (A)—

(I) by striking “In the case in which a State’s payment for” and inserting “With respect to”; and

(II) by striking “with respect to an item or service is reduced or eliminated through the application of paragraph (2)” and inserting “for an item or service”; and

(ii) in subparagraph (A), by striking “(if any)”; and

(D) by adding at the end the following new paragraph:

“(3) Each State shall establish procedures for receiving and processing claims for payment for medicare cost-sharing with respect to items or services furnished to qualified medicare beneficiaries by providers of services and suppliers under title XVIII who are not participating providers under the State plan.”.

(2) PROVISION OF MEDICAL ASSISTANCE TO DUAL ELIGIBLES IN MA PLANS.—Section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

“(4)(A) Each State shall—

“(i) identify those individuals who are eligible for medical assistance for medicare cost-sharing and who are enrolled with a Medicare Advantage plan under part C of title XVIII; and

“(ii) for the individuals so identified, provide for payment of medical assistance for the medicare cost-sharing (including cost-sharing under a Medicare Advantage plan) to which they are entitled.

“(B)(i) The Inspector General of the Department of Health and Human Services shall examine, not later than one year after the date of the enactment of this paragraph and every 3 years thereafter, whether States are providing for medical assistance for medicare cost-sharing for individuals enrolled in Medicare Advantage plans in accordance with this title. The Inspector General shall submit to the Secretary a report on such examination and a finding as to whether States are failing to provide such medical assistance.

“(ii) If a report under clause (i) includes a finding that States are failing to provide such medical assistance, not later than 60 days after the date of receiving such report the Secretary shall submit to Congress a report that includes a plan of action on how to enforce such requirement.”.

(3) CONFORMING AMENDMENTS.—

(A) PROVIDER AGREEMENTS.—Section 1866(a)(1)(A)(ii) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(A)(ii)) is amended by striking “1902(n)(3)” and inserting “1902(n)(2)”.

(B) NONPARTICIPATING PROVIDERS.—Section 1848(g)(3)(A) of the Social Security Act (42 U.S.C. 1395w-4(g)(3)(A)) is amended by striking “1902(n)(3)(A)” and inserting “1902(n)(2)(A)”.

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on the date of enactment of this Act.

(B) EXCEPTION.—The amendment made by paragraph (2) shall be effective and apply as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

SEC. 9. TWO-WAY DEEMING BETWEEN MEDICARE SAVINGS PROGRAM AND LOW-INCOME SUBSIDY PROGRAM.

(a) LOW-INCOME SUBSIDY PROGRAM.—Section 1860D-14(a)(3) of the Social Security Act (42 U.S.C. 1395w-104(a)(3)), as amended by section 4, is amended by adding at the end the following new subparagraph:

“(J) DEEMED TREATMENT FOR QUALIFIED MEDICARE BENEFICIARIES AND SPECIFIED LOW-INCOME MEDICARE BENEFICIARIES.—

“(i) QMBS ELIGIBLE FOR FULL SUBSIDY.—A part D eligible individual who has been determined for purposes of title XIX to be a qualified medicare beneficiary is deemed, for purposes of this part and without the need to file any additional application, to be a subsidy eligible individual described in paragraph (1).

“(ii) SLMBS ELIGIBLE FOR PARTIAL SUBSIDY.—A part D eligible individual who has been determined to be a specified low-income medicare beneficiary (as defined in section 1905(p)(1)) and who is not described in paragraph (1) is deemed, for purposes of this part and without the need to file any additional application, to be a subsidy eligible individual who is not described in paragraph (1).”.

(b) MEDICARE SAVINGS PROGRAM.—Section 1905(p) of the Social Security Act (42 U.S.C. 1396d(p)), as amended by section 4, is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

“(8) An individual who has been determined eligible for premium and cost-sharing subsidies under—

“(A) section 1860D-14(a)(1) is deemed, for purposes of this title and without the need to file any additional application, to be a qualified medicare beneficiary for purposes of this title; or

“(B) section 1860D-14(a)(2) is deemed, for purposes of this title and without the need to file any additional application, to qualify for medical assistance as a specified low-income medicare beneficiary (described in section 1902(a)(10)(E)(iii)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to eligibility for months beginning on or after January 2010.

SEC. 10. IMPROVING LINKAGES BETWEEN HEALTH PROGRAMS AND SNAP.

(a) LOW-INCOME PART D SUBSIDY PROGRAM.—Section 1144(c) of the Social Security Act (42 U.S.C. 1320b-14(c)) is amended—

(1) in paragraph (1)(C) by striking “an application for benefits under the Medicare Savings Program.” and inserting “applications for benefits under the Medicare Savings Program and the supplemental nutrition assistance program.”;

(2) by striking paragraph (3) and inserting the following:

“(3) TRANSMITTAL OF DATA TO STATES.—

“(A) IN GENERAL.—Beginning on January 1, 2010, with the consent of an individual completing an application for benefits described in paragraph (1)(B), the Commissioner shall electronically transmit data from such application—

“(i) to the appropriate State Medicaid agency, as determined by the Commissioner, which transmittal shall initiate an application of the individual for benefits under the

Medicare Savings Program with the State Medicaid agency; and

“(ii) to the appropriate State agency which administers benefits under the supplemental nutrition assistance program, as determined by the Commissioner, which transmittal shall initiate an application of the individual for benefits under the supplemental nutrition assistance program with the State agency that administers that program.

“(B) CONSULTATION REGARDING CONTENT, TIME, FORM, FREQUENCY AND MANNER OF TRANSMISSION.—In order to ensure that such data transmittal provides effective assistance for purposes of State adjudication of applications for benefits under the Medicare Savings Program and the supplemental nutrition assistance program, the Commissioner shall consult with the Secretary after the Secretary has consulted with the States, regarding the content, form, frequency, and manner in which data (on a uniform basis for all States) shall be transmitted under this paragraph.”;

(3) in paragraph (5), by adding at the end the following new subparagraph:

“(D) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ADMINISTRATIVE COSTS.—The costs of the Social Security Administration’s work related to the supplemental nutrition assistance program under this subsection shall be eligible for reimbursement under section 11(j)(2)(C) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(j)(2)(C)). To the extent necessary the Commissioner and the Secretary of Agriculture shall revise any memoranda of understanding in effect under such section.”; and

(4) by adding at the end the following new paragraph:

“(8) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM DEFINED.—For purposes of this subsection, the term ‘supplemental nutrition assistance program’ means the program of temporary benefits authorized under section 11(v) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(v)).”.

(b) TEMPORARY SUPPLEMENTAL NUTRITION ASSISTANCE BENEFITS.—Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. 2020) is amended by adding at the end the following:

“(v) TEMPORARY BENEFITS FOR MEDICARE PART D LOW INCOME SUBSIDY APPLICANTS.—

“(1) DEFINITION OF MEDICARE PART D LOW INCOME SUBSIDY APPLICANT.—In this subsection, the term ‘Medicare part D low income subsidy applicant’ means an individual, along with any other family members, whose low income subsidy application information has been electronically transmitted to the State agency under section 1144(c)(3) of the Social Security Act (42 U.S.C. 1320b-14(c)(3)).

“(2) PROVISION OF TEMPORARY BENEFITS.—A State agency shall provide temporary supplemental nutrition assistance program benefits to a Medicare part D low income subsidy applicant whose—

“(A) income does not exceed 150 percent of the poverty line (as determined in accordance with section 5(c)(1)); and

“(B) financial resources do not exceed the limit in effect in the State for such households under section 5.

“(3) DETERMINATION BASED ON MEDICARE INFORMATION.—For purposes of determining eligibility under paragraph (2) and the amount of temporary benefits under paragraph (5), information on household members, household income, and household resources from the Medicare part D low income subsidy application as transmitted to the State agency under section 1144(c)(3) of the Social Security Act (42 U.S.C. 1320b-14(c)(3)) shall satisfy the requirements of this Act with regard to—

“(A) the members of the household under section 3(n); and

“(B) the gross income and financial resources of the household under section 5.

“(4) TEMPORARY BENEFIT PERIOD.—A household shall receive temporary supplemental nutrition assistance benefits under this subsection for a period of not more than 2 months.

“(5) TEMPORARY BENEFIT AMOUNT.—

“(A) IN GENERAL.—During the temporary benefit period under paragraph (4), except as provided in subparagraph (B), a household shall receive a monthly amount of supplemental nutrition assistance program benefits calculated under section 8(a).

“(B) CALCULATION.—In calculating benefits under subparagraph (A)—

“(i) the benefits shall be determined based on the gross income of the household rather than net income; and

“(ii) the minimum allotment described in the proviso in section 8(a) shall be equal to 40 percent of the cost of the thrifty food plan for a household containing 1 member, as determined by the Secretary under section 3, rounded to the nearest whole dollar increment.

“(6) DETERMINATION OF FUTURE ELIGIBILITY.—During the temporary benefit period under paragraph (4), the State agency shall provide to the household—

“(A) an application to apply for benefits under the other provisions of this Act; and

“(B) an opportunity to complete the application process by the month immediately following the temporary benefit period, without a delay or suspension in the benefits of the household.

“(7) LIMITATION.—This subsection shall not apply to individuals who—

“(A) are members of households that currently receive benefits under this Act; or

“(B) have received benefits under this subsection in the preceding 12-month period.”.

(c) MEDICARE SAVINGS PROGRAM APPLICATIONS.—

(1) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (72), by striking “and” at the end;

(B) in paragraph (73), by striking the period at the end and inserting “; and”; and

(C) by inserting after paragraph (73) the following new paragraph:

“(74) provide that the State coordinates with the State agency that administers benefits under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) to ensure that individuals applying for medical assistance provided under section 1902(a)(10)(E), as described in sections 1905(p) and 1933, have the opportunity to apply for, establish eligibility for, and, if eligible, receive supplemental nutrition assistance program benefits.”.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) take effect on the date that is 1 year after the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment

of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(3) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the process each State uses to meet the requirements under section 1902(a)(74) of the Social Security Act, as added by subsection (c).

SEC. 11. EXPEDITING LOW-INCOME SUBSIDIES UNDER THE MEDICARE PRESCRIPTION DRUG PROGRAM.

(a) TARGETED OUTREACH FOR LOW-INCOME SUBSIDIES.—

(1) IN GENERAL.—Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) is amended by adding at the end the following new subsection:

“(e) TARGETED OUTREACH FOR LOW-INCOME SUBSIDIES.—

“(1) TARGETED IDENTIFICATION OF SUBSIDY-ELIGIBLE INDIVIDUALS.—

“(A) IN GENERAL.—The Commissioner of Social Security shall provide for the identification of individuals who are potentially eligible for low-income assistance under this section through requests to the Secretary of the Treasury in accordance with the criterion established under section 6103(l)(21) of the Internal Revenue Code of 1986 for information indicating whether the individual involved is likely eligible for such assistance.

“(B) INITIATION OF IDENTIFICATIONS.—Not later than 90 days after the date of the enactment of this subsection, the Commissioner of Social Security shall begin the identification of individuals through the process described in subparagraph (A) and shall, by such date and through such process, submit to the Secretary of the Treasury requests for part D eligible individuals who the Commissioner has identified as potentially eligible for low-income subsidies under this section before such date of enactment.

“(2) NOTIFICATION OF POTENTIALLY ELIGIBLE INDIVIDUALS.—In the case of each individual identified under paragraph (1) who has not otherwise applied for, or been determined eligible for, benefits under this section (or who has applied for and been determined ineligible for such benefits based on excess income, resources, or both), the Commissioner shall transmit by mail to the individual a letter including the information and application required to be provided under subparagraphs (A), (B), and (D) of section 1144(c)(1).

“(3) FOLLOW-UP COMMUNICATIONS.—If an individual to whom a letter is transmitted under paragraph (2) does not affirmatively respond to such letter either by making an enrollment, completing an application, or declining either or both, the Commissioner shall make additional attempts to contact the individual to obtain such an affirmative response.

“(4) USE OF PREFERRED LANGUAGE IN SUBSEQUENT COMMUNICATIONS.—In the case an application is completed by an individual pursuant to this subsection in which a language other than English is specified, the Commissioner shall provide that subsequent communications under this part to the individual shall be in such language as needed.

“(5) CONSTRUCTION.—Nothing in this subsection shall be construed as precluding the Commissioner from taking additional outreach efforts to enroll eligible individuals under this part and to provide low-income subsidies to eligible individuals.

“(6) MAINTENANCE OF EFFORT WITH RESPECT TO OUTREACH.—In no case shall the level of effort with respect to outreach to and enrollment of individuals who are potentially eligible for low-income assistance under this

section after the date of the enactment of this subsection be less than such level of effort before such date of enactment until at least 90 percent of such potentially eligible individuals have affirmatively responded.

“(7) GAO REPORT TO CONGRESS.—Not later than 2 years after the date of the first submission to the Secretary of the Treasury described in paragraph (1)(B), the Comptroller General of the United States shall submit to Congress a report, with respect to the 18-month period following the establishment of the process described in paragraph (1)(A), on—

“(A) the extent to which the percentage of individuals who are eligible for low-income assistance under this section but not enrolled under this part has decreased during such period;

“(B) how the Commissioner of Social Security has used any savings resulting from the implementation of this section and section 6103(1)(21) of the Internal Revenue Code of 1986 to improve outreach to individual described in subparagraph (A) to increase enrollment of such individuals under this part;

“(C) the effectiveness of using information from the Secretary of the Treasury in accordance with section 6103(1)(21) of the Internal Revenue Code of 1986 for purposes of indicating whether individuals are eligible for low-income assistance under this section; and

“(D) the effectiveness of the outreach conducted by the Commissioner of Social Security based on the data described in subparagraph (C).”

(2) CONFORMING AMENDMENT.—Section 1144(c)(1) of the Social Security Act (42 U.S.C. 1320b-14(c)(1)) is amended by inserting “(including through request to the Secretary of the Treasury pursuant to section 1860D-14(e))” before “, the Commissioner shall”.

(b) IMPROVEMENTS TO THE LOW-INCOME SUBSIDY APPLICATIONS.—Section 1860D-14(a)(3) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)) is amended—

(1) in subparagraph (E), by striking clauses (ii) and (iii) and redesignating clause (iv) as clause (ii);

(2) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(3) by inserting after subparagraph (E) the following new subparagraph:

“(F) SIMPLIFIED LOW-INCOME SUBSIDY APPLICATION AND PROCESS.—

“(i) IN GENERAL.—The Secretary, jointly with the Commissioner of Social Security, shall—

“(I) develop a model, simplified application form and process consistent with clause (ii) for the determination and verification of a part D eligible individual’s assets or resources under this paragraph; and

“(II) provide such form to States.

“(ii) DOCUMENTATION AND SAFEGUARDS.—Under such process—

“(I) the application form shall consist of an attestation under penalty of perjury regarding the level of assets or resources (or combined assets and resources in the case of a married part D eligible individual) and valuations of general classes of assets or resources;

“(II) such form shall not require the submittal of additional documentation regarding income or assets;

“(III) matters attested to in the application shall be subject to appropriate methods of administrative verification;

“(IV) the applicant shall be permitted to authorize another individual to act as the applicant’s personal representative with respect to communications under this part and the enrollment of the applicant into a prescription drug plan (or MA-PD plan) and for low-income subsidies under this section; and

“(V) the application form shall allow for the specification of a language (other than English) that is preferred by the individual for subsequent communications with respect to the individual under this part.

“(iii) NO RECOVERY FOR CERTAIN SUBSIDIES IMPROPERLY PAID.—If an individual in good faith and in the absence of fraud is provided low-income subsidies under this section, and if the individual is subsequently found not eligible for such subsidies, there shall be no recovery made against the individual because of such subsidies improperly paid.”

(c) DISCLOSURES TO FACILITATE IDENTIFICATION OF INDIVIDUALS LIKELY TO BE ELIGIBLE FOR THE LOW-INCOME ASSISTANCE UNDER THE MEDICARE PRESCRIPTION DRUG PROGRAM.—

(1) IN GENERAL.—

Subsection (1) of section 6103 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(21) DISCLOSURE OF RETURN INFORMATION TO FACILITATE IDENTIFICATION OF INDIVIDUALS LIKELY TO BE ELIGIBLE FOR LOW-INCOME SUBSIDIES UNDER MEDICARE PRESCRIPTION DRUG PROGRAM.—

“(A) IN GENERAL.—The Secretary, upon written request from the Commissioner of Social Security, shall disclose to officers and employees of the Social Security Administration, with respect to any individual identified by the Commissioner—

“(i) whether, based on the criterion determined under subparagraph (B), such individual is likely to be eligible for low-income assistance under section 1860D-14 of the Social Security Act, or

“(ii) that, based on such criterion, there is insufficient information available to the Secretary to make the determination described in clause (i).

“(B) CRITERION.—Not later than 90 days after the date of the enactment of this paragraph, the Secretary, in consultation with the Commissioner of Social Security, shall develop the criterion by which the determination under subparagraph (A)(i) shall be made (and the criterion for determining that insufficient information is available to make such determination). Such criterion may include analysis of information available on such individual’s return, the return of such individual’s spouse, and any information related to such individual or such individual’s spouse which is available on any information return.”

(2) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Paragraph (4) of section 6103(p) of such Code is amended by striking “or (17)” each place it appears and inserting “(17), or (21)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to disclosures made after the date of the enactment of this Act.

SEC. 12. ENHANCED OVERSIGHT AND ENFORCEMENT RELATING TO REIMBURSEMENTS FOR RETROACTIVE LIS ENROLLMENT.

(a) IN GENERAL.—In the case of a retroactive LIS enrollment beneficiary (as defined in subsection (e)(4)) who is enrolled under a prescription drug plan under part D of title XVIII of the Social Security Act (or an MA-PD plan under part C of such title)—

(1) the beneficiary (or any eligible third party) is entitled to reimbursement by the plan for covered drug costs (as defined in subsection (e)(1)) incurred by the beneficiary during the retroactive coverage period of the beneficiary in accordance with subsection (b) and in the case of such a beneficiary described in subsection (e)(4)(A)(i), such reimbursement shall be made automatically by the plan upon receipt of appropriate notice the beneficiary is eligible for assistance described in such subsection (e)(4)(A)(i) with-

out further information required to be filed with the plan by the beneficiary;

(2) the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall not make payment to the plan—

(A) in the case that the beneficiary is described in subsection (e)(4)(A)(i), for premium subsidies and cost sharing subsidies under section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) with respect to the provision of prescription drug coverage to the beneficiary during such retroactive period; and

(B) in the case that the beneficiary is described in subsection (e)(4)(A)(ii), for direct subsidies under section 1860D-15(a)(1) of such Act and premium subsidies and cost-sharing subsidies under section 1860D-14 of such Act with respect to the provision of prescription drug coverage to the beneficiary during such retroactive period;

unless the plan demonstrates to the Secretary that the plan has provided timely and accurate reimbursement to the beneficiary (or eligible third party) in accordance with paragraph (1);

(3) the Secretary shall not make any payment described in paragraph (2) to the plan with respect to such beneficiary for any month of the retroactive enrollment period during which no expenses for covered part D drugs (as defined in section 1860D-2(e) of the Social Security Act (42 U.S.C. 1395w-102(e))) were incurred by such beneficiary (or eligible third party on behalf of such beneficiary); and

(4) any payment owed the plan pursuant to this section, taking into account paragraphs (2) and (3), shall be made at the time the Centers for Medicare & Medicaid Services reconciles payments for the entire plan year following the end of the plan year, and not before such time.

(b) ADMINISTRATIVE REQUIREMENTS RELATING TO REIMBURSEMENTS.—

(1) LINE-ITEM DESCRIPTION.—Each reimbursement made by a prescription drug plan or MA-PD plan under subsection (a)(1) shall include a line-item description of the items for which the reimbursement is made.

(2) TIMING OF REIMBURSEMENTS.—A prescription drug plan or MA-PD plan must make a reimbursement under subsection (a)(1) to a retroactive LIS enrollment beneficiary, with respect to a claim, not later than 30 days after—

(A) in the case of a beneficiary described in subsection (e)(4)(A)(i), the date on which the plan receives notice from the Secretary that the beneficiary is eligible for assistance described in such subsection; or

(B) in the case of a beneficiary described in subsection (e)(4)(A)(ii), the date on which the beneficiary files the claim with the plan.

(c) NOTICE REQUIREMENTS.—

(1) BY SECRETARY OF HHS AND COMMISSION OF THE SOCIAL SECURITY ADMINISTRATION.—The Secretary, jointly with the Commissioner of the Social Security Administration, shall ensure that each retroactive LIS enrollment beneficiary receives, with any letter or notification of eligibility for a low-income subsidy under section 1860D-14 of the Social Security Act, a notice of their right to reimbursement described in subsection (a)(1) for covered drug costs incurred during the retroactive coverage period of the beneficiary. Such notice shall—

(A) with respect to a beneficiary described in subsection (e)(4)(A)(i), inform the beneficiary of the beneficiary’s right to automatic reimbursement as described in subsection (a)(1); and

(B) with respect to a beneficiary described in subsection (e)(4)(A)(ii), include a description of a clear process that the beneficiary should follow to seek such reimbursement.

(2) BY PRESCRIPTION DRUG PLANS.—

(A) IN GENERAL.—Each prescription drug plan under part D of title XVIII of the Social Security Act (and MA-PD plan under part C of such title) shall include in a notice from the plan to a retroactive LIS enrollment beneficiary described in subsection (e)(4)(A)(i) a model notice developed under subparagraph (B) describing the process the beneficiary must follow to seek retroactive reimbursement. Such notice shall include any form required by the plan to complete such reimbursement and shall indicate the period of retroactive coverage for which the beneficiary is eligible for such reimbursement.

(B) MODEL NOTICE.—The Secretary, jointly with the Commissioner of Social Security, shall develop a model notice for purposes of subparagraph (A) and shall make such model notice available to all prescription drug plans under part D of title XVIII of the Social Security Act (and MA-PD plans under part C of such title).

(d) PUBLIC POSTING TO TRACK PAYMENTS.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary shall post (and annually update) on the public Internet website of the Department of Health and Human Services information on the total amount of payments made by the Secretary under subsection (a)(2) to prescription drug plans during the most recent plan year for which plan data is available.

(2) SPECIFIC INFORMATION.—Such information posted—

(A) in 2010 or in a subsequent year before 2016, shall include information on payments made for years beginning with 2006 and ending with the year for which the most current information is available; and

(B) in 2016 or a subsequent year, shall include information on payments made for at least the 10 previous years.

(e) DEFINITIONS.—In this section:

(1) COVERED DRUG COSTS.—The term “covered drug costs” means, with respect to a retroactive LIS enrollment beneficiary enrolled under a prescription drug plan under part D of title XVIII of the Social Security Act (or an MA-PD plan under part C of such title), the amount by which—

(A) the costs incurred by such beneficiary during the retroactive coverage period of the beneficiary for covered part D drugs, premiums, and cost-sharing under such title; exceeds

(B) such costs that would have been incurred by such beneficiary during such period if the beneficiary had been both enrolled in the plan and recognized by such plan as qualified during such period for the low income subsidy under section 1860D-14 of the Social Security Act to which the individual is entitled.

(2) ELIGIBLE THIRD PARTY.—The term “eligible third party” means, with respect to a retroactive LIS enrollment beneficiary, an organization or other third party that paid on behalf of such beneficiary for covered drug costs incurred by such beneficiary during the retroactive coverage period of such beneficiary.

(3) RETROACTIVE COVERAGE PERIOD.—The term “retroactive coverage period” means—

(A) with respect to a retroactive LIS enrollment beneficiary described in paragraph (4)(A)(i), the period—

(i) beginning on the effective date of the assistance described in such paragraph for which the individual is eligible; and

(ii) ending on the date the plan effectuates the status of such individual as so eligible; and

(B) with respect to a retroactive LIS enrollment beneficiary described in paragraph (4)(A)(ii), the period—

(i) beginning on the date the individual is both entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act and eligible for medical assistance under a State plan under title XIX of such Act; and

(ii) ending on the date the plan effectuates the status of such individual as a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act).

(4) RETROACTIVE LIS ENROLLMENT BENEFICIARY.—

(A) IN GENERAL.—The term “retroactive LIS enrollment beneficiary” means an individual who—

(i) is enrolled in a prescription drug plan under part D of title XVIII of the Social Security Act (or an MA-PD plan under part C of such title) and subsequently becomes eligible as a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act), an individual receiving a low-income subsidy under section 1860D-14 of such Act, an individual receiving assistance under the Medicare Savings Program implemented under clauses (i), (ii), (iii), and (iv) of section 1902(a)(10)(E) of such Act, or an individual receiving assistance under the supplemental security income program under section 1611 of such Act; or

(ii) subject to subparagraph (B)(i), is a full-benefit dual eligible individual (as defined in section 1935(c)(6) of such Act) who is automatically enrolled in such a plan under section 1860D-1(b)(1)(C) of such Act.

(B) EXCEPTION FOR BENEFICIARIES ENROLLED IN RFP PLAN.—

(i) IN GENERAL.—In no case shall an individual described in subparagraph (A)(ii) include an individual who is enrolled, pursuant to a RFP contract described in clause (ii), in a prescription drug plan offered by the sponsor of such plan awarded such contract.

(ii) RFP CONTRACT DESCRIBED.—The RFP contract described in this section is a contract entered into between the Secretary and a sponsor of a prescription drug plan pursuant to the Centers for Medicare & Medicaid Services' request for proposals issued on February 17, 2009, relating to Medicare part D retroactive coverage for certain low income beneficiaries, or a similar subsequent request for proposals.

(f) GAO REPORT.—Not later than 24 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the extent to which the provisions of this section improve reimbursement for covered drug costs to retroactive LIS enrollment beneficiaries and lower the amounts of payments made by the Secretary, with respect to such beneficiaries, to prescription drug plans under part D of title XVIII of the Social Security Act (and MA-PD plans under part C of such title).

(g) REPORT TO CONGRESS.—In the case that an RFP contract described in subsection (e)(4)(B)(ii) is awarded, not later than two years after the effective date of such contract, the Secretary of Health and Human Services shall submit to Congress a report evaluating the program carried out through such contract.

(h) EFFECTIVE DATE.—Paragraphs (2) and (3) of subsection (a) and subsections (b) and (c) shall apply to subsidy determinations made on or after the date that is 3 months after the date of the enactment of this Act.

SEC. 13. INTELLIGENT ASSIGNMENT IN ENROLLMENT.

(a) IN GENERAL.—Section 1860D-1(b)(1) of the Social Security Act (42 U.S.C. 1395w-101(b)(1), as amended by section 7(b), is amended—

(1) in the second sentence of subparagraph (C), by striking “on a random basis among all such plans” and inserting “, subject to

subparagraph (E), in the most appropriate plan for such individual”; and

(2) by adding at the end the following new subparagraph:

“(E) INTELLIGENT ASSIGNMENT.—In the case of any auto-enrollment under subparagraph (C), no part D eligible individual described in such subparagraph shall be enrolled in a prescription drug plan which does not meet requirements established by the Secretary.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to enrollments effected on or after November 15, 2010.

SEC. 14. MEDICARE ENROLLMENT ASSISTANCE.

(a) ADDITIONAL FUNDING FOR STATE HEALTH INSURANCE ASSISTANCE PROGRAMS.—

(1) GRANTS.—

(A) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall use amounts made available under subparagraph (B) to make grants to States for State health insurance assistance programs receiving assistance under section 4360 of the Omnibus Budget Reconciliation Act of 1990.

(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in the same proportion as the Secretary determines under section 1853(f) of such Act (42 U.S.C. 1395w-23(f)), of \$14,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for fiscal year 2011, to remain available until expended.

(2) AMOUNT OF GRANTS.—The amount of a grant to a State under this subsection from the total amount made available under paragraph (1) shall be equal to the sum of the amount allocated to the State under paragraph (3)(A) and the amount allocated to the State under subparagraph (3)(B).

(3) ALLOCATION TO STATES.—

(A) ALLOCATION BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES.—The amount allocated to a State under this subparagraph from $\frac{3}{5}$ of the total amount made available under paragraph (1) shall be based on the number of individuals who meet the requirement under subsection (a)(3)(A)(ii) of section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114) but who have not enrolled to receive a subsidy under such section 1860D-14 relative to the total number of individuals who meet the requirement under such subsection (a)(3)(A)(ii) in each State, as estimated by the Secretary.

(B) ALLOCATION BASED ON PERCENTAGE OF RURAL BENEFICIARIES.—The amount allocated to a State under this subparagraph from $\frac{1}{5}$ of the total amount made available under paragraph (1) shall be based on the number of part D eligible individuals (as defined in section 1860D-1(a)(3)(A) of such Act (42 U.S.C. 1395w-101(a)(3)(A))) residing in a rural area relative to the total number of such individuals in each State, as estimated by the Secretary.

(4) PORTION OF GRANT BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES TO BE USED TO PROVIDE OUTREACH TO INDIVIDUALS WHO MAY BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE FOR THE MEDICARE SAVINGS PROGRAM.—Each grant awarded under this subsection with respect to amounts allocated under paragraph (3)(A) shall be used to provide outreach to individuals who may be subsidy eligible individuals (as defined in section 1860D-14(a)(3)(A) of the Social Security Act (42 U.S.C. 1395w-114(a)(3)(A))) or eligible for the Medicare Savings Program (as defined in subsection (f)).

(b) ADDITIONAL FUNDING FOR AREA AGENCIES ON AGING.—

(1) GRANTS.—

(A) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Aging, shall make grants to States for area agencies on aging (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)) and Native American programs carried out under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in the same proportion as the Secretary determines under section 1853(f) of such Act (42 U.S.C. 1395w–23(f)), of \$10,000,000 to the Administration on Aging for fiscal year 2011, to remain available until expended.

(2) AMOUNT OF GRANT AND ALLOCATION TO STATES BASED ON PERCENTAGE OF LOW-INCOME AND RURAL BENEFICIARIES.—The amount of a grant to a State under this subsection from the total amount made available under paragraph (1) shall be determined in the same manner as the amount of a grant to a State under subsection (a), from the total amount made available under paragraph (1) of such subsection, is determined under paragraph (2) and subparagraphs (A) and (B) of paragraph (3) of such subsection.

(3) REQUIRED USE OF FUNDS.—

(A) ALL FUNDS.—Subject to subparagraph (B), each grant awarded under this subsection shall be used to provide outreach to eligible Medicare beneficiaries regarding the benefits available under title XVIII of the Social Security Act.

(B) OUTREACH TO INDIVIDUALS WHO MAY BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE FOR THE MEDICARE SAVINGS PROGRAM.—Subsection (a)(4) shall apply to each grant awarded under this subsection in the same manner as it applies to a grant under subsection (a).

(C) ADDITIONAL FUNDING FOR AGING AND DISABILITY RESOURCE CENTERS.—

(1) GRANTS.—

(A) IN GENERAL.—The Secretary shall make grants to Aging and Disability Resource Centers under the Aging and Disability Resource Center grant program that are established centers under such program on the date of the enactment of this Act.

(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in the same proportion as the Secretary determines under section 1853(f) of such Act (42 U.S.C. 1395w–23(f)), of \$10,000,000 to the Administration on Aging for fiscal year 2011, to remain available until expended.

(2) REQUIRED USE OF FUNDS.—Each grant awarded under this subsection shall be used to provide outreach to individuals regarding the benefits available under the Medicare prescription drug benefit under part D of title XVIII of the Social Security Act and under the Medicare Savings Program.

(d) COORDINATION OF EFFORTS TO INFORM OLDER AMERICANS ABOUT BENEFITS AVAILABLE UNDER FEDERAL AND STATE PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Aging, in cooperation with related Federal agency partners, shall make a grant to, or enter into a contract with, a qualified, experienced entity under which the entity shall—

(A) maintain and update web-based decision support tools, and integrated, person-centered systems, designed to inform older individuals (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)) about the full range of benefits for which the individuals may be eligible under Federal and State programs;

(B) utilize cost-effective strategies to find older individuals with the greatest economic need (as defined in such section 102) and inform the individuals of the programs;

(C) develop and maintain an information clearinghouse on best practices and the most cost-effective methods for finding older individuals with greatest economic need and informing the individuals of the programs; and

(D) provide, in collaboration with related Federal agency partners administering the Federal programs, training and technical assistance on the most effective outreach, screening, and follow-up strategies for the Federal and State programs.

(2) FUNDING.—For purposes of making a grant or entering into a contract under paragraph (1), the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t), in the same proportion as the Secretary determines under section 1853(f) of such Act (42 U.S.C. 1395w–23(f)), of \$10,000,000 to the Administration on Aging for fiscal year 2011, to remain available until expended.

(e) MEDICARE SAVINGS PROGRAM DEFINED.—For purposes of this section, the term “Medicare Savings Program” means the program of medical assistance for payment of the cost of medicare cost-sharing under the Medicaid program pursuant to sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E), 1396u–3).

SEC. 15. QMB BUY-IN OF PART A AND PART B PREMIUMS.

(a) REQUIREMENT.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 10, is amended—

(1) in paragraph (73), by striking “and” at the end;

(2) in paragraph (74), by striking the period at the end and inserting “; and”; and

(3) by inserting after paragraph (74) the following new paragraph:

“(75) provide that the State enters into a modification of an agreement under section 1818(g).”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on the date that is 6 months after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 16. INCREASING AVAILABILITY OF MSP APPLICATIONS THROUGH AVAILABILITY ON THE INTERNET AND DESIGNATION OF PREFERRED LANGUAGE.

(a) REQUIREMENT FOR STATES.—

(1) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 15, is amended—

(A) in paragraph (74), by striking “and” at the end;

(B) in paragraph (75), by striking the period at the end and inserting “; and”; and

(C) by inserting after paragraph (75) the following new paragraph:

“(76) provide—

“(A) that the application for medical assistance for medicare cost-sharing under this title used by the State allows an individual to specify a preferred language for subsequent communication and, in the case in which a language other than English is specified, provide that subsequent communications under this title to the individual shall be in such language; and

“(B) that the State makes such application available through an Internet website and provides for such application to be completed on such website.”

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection take effect on the date that is 2 years after the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(b) REQUIREMENT FOR THE SECRETARY.—Section 1905(p)(5) of the Social Security Act (42 U.S.C. 1396d(p)(5)) is amended by adding at the end the following new sentence: “Such form shall allow an individual to specify a preferred language for subsequent communication.”

SEC. 17. STATE MEDICAID AGENCY CONSIDERATION OF LOW-INCOME SUBSIDY APPLICATION AND DATA TRANSMITTAL.

(a) TECHNICAL AMENDMENTS.—

(1) IN GENERAL.—Section 1144(c)(3)(A)(i) of the Social Security Act (42 U.S.C. 1320b–14(c)(3)(A)(i)), as amended by section 10, is amended—

(A) by striking “transmittal”; and

(B) by inserting “(as specified in section 1935(a)(4))” before the semicolon at the end.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of section 113(a) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275).

(b) CLARIFICATION OF STATE MEDICAID AGENCY CONSIDERATION OF LOW-INCOME SUBSIDY APPLICATION.—Section 1935(a)(4) of the Social Security Act (42 U.S.C. 1396u–5(a)(4)), as added by section 113(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), is amended—

(1) by striking "PROGRAM.—The State" and inserting "PROGRAM.—

"(A) IN GENERAL.—The State";

(2) in subparagraph (A), as inserting by paragraph (1), by striking the second sentence; and

(3) by adding at the end the following new subparagraphs:

"(B) For purposes of a State's obligation under section 1902(a)(8) to furnish medical assistance with reasonable promptness, the date of the electronic transmission by the Commissioner of Social Security to the State Medicaid agency of data under section 1144(c)(3) shall be the date of the filing of such application for benefits under the Medicare Savings Program.

"(C) For the purpose of determining when medical assistance shall be made available for medicare cost-sharing under this title, the State shall consider the date of the application for low-income subsidies under section 1860D-14 to be the date of the filing of an application for benefits under the Medicare Savings Program."

By Mr. BINGAMAN (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. HARKIN):

S. 1186. A bill to amend title XVIII of the Social Security Act to eliminate the in the home restriction for Medicare coverage of mobility devices for individuals with expected long-term needs; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today along with Senators COLLINS, LIEBERMAN and HARKIN to introduce the Medicare Independent Living Act of 2009. This legislation would eliminate Medicare's "in the home" restriction for the coverage of mobility devices, including wheelchairs and scooters, for those with disabilities and expected long-term needs. This includes people with multiple sclerosis, paraplegia, osteoarthritis, and cerebrovascular disease including acute stroke and conditions like aneurysms.

As currently interpreted by the Centers for Medicare and Medicaid Services, CMS, the "in the home" restriction only permits beneficiaries to obtain wheelchairs that are necessary for use inside the home. As a result, seriously disabled beneficiaries who would primarily utilize a wheelchair outside the home are prevented from receiving this critical and basic equipment through Medicare. For example, this restriction prevents beneficiaries from receiving wheelchairs to access their work, the community-at-large, place of worship, school, physician's offices, or pharmacies.

As the Medicare Rights Center in a report entitled "Forced Isolation: Medicare's 'In The home' Coverage Standards for Wheelchairs" in March 2004 notes, "This effectively disqualifies you from leaving your home without the assistance of others."

Furthermore, in a Kansas City Star article dated July 3, 2005, Mike Oxford with the National Council on Independent Living noted, "You look at mobility assistance as a way to liberate yourself." He added that the restriction "is just backward."

In fact, policies such as these are not only backward but directly contradict

numerous initiatives aimed at increasing community integration of people with disabilities, including the Americans with Disabilities Act, the Ticket-to-Work Program, the New Freedom Initiative, and the Olmstead Supreme Court decision.

According to the Medicare Rights Center update dated March 23, 2006, "This results in arbitrary denials. People with apartments too small for a power wheelchair are denied a device that could also get them down the street. Those in more spacious quarters get coverage, allowing them to scoot from room to room and to the grocery store. People who summon all their willpower and strength to hobble around a small apartment get no help for tasks that are beyond them and their front door."

In New Mexico, I have heard this complaint about the law repeatedly from our State's most vulnerable disabled and senior citizens. People argue the provision is being misinterpreted by the administration and results in Medicare beneficiaries being trapped in their home.

The Independence Through Enhancement of Medicare and Medicaid, ITEM, Coalition adds in a letter to CMS on this issue in November 25, 2005, "There continues to be no clinical basis for the 'in the home' restriction and by asking treating practitioners to document medical need only within the home setting, CMS is severely restricting patients from receiving the most appropriate devices to meet their mobility needs."

My legislation would clarify that this restriction does not apply to mobility devices, including wheelchairs, for people with disabilities in the Medicare Program. The language change is fairly simple and simply clarifies that the "in the home" restriction for durable medical equipment does not apply in the case of mobility devices needed by Medicare beneficiaries with expected long-term needs for use "in customary settings such as normal domestic, vocational, and community activities."

This legislation is certainly not intended to discourage CMS from dedicating its resources to reducing waste, fraud, and abuse in the Medicare system, as those efforts are critical to ensuring that Medicare remains financially viable and strong in the future. However, it should be noted that neither Medicaid nor the Department of Veterans Affairs impose such "in the home" restrictions on mobility devices.

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

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

S. 1186

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Independent Living Act of 2009".

SEC. 2. ELIMINATION OF THE HOME RESTRICTION FOR MEDICARE COVERAGE OF MOBILITY DEVICES FOR INDIVIDUALS WITH EXPECTED LONG-TERM NEEDS.

(a) IN GENERAL.—Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by inserting "or, in the case of a mobility device required by an individual with expected long-term need, used in customary settings for the purpose of normal domestic, vocational, or community activities" after "1819(a)(1)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after the date of enactment of this Act.

By Mr. REED (for himself, Ms. MURKOWSKI, and Mr. WHITEHOUSE):

S. 1188. A bill to amend the Public Health Service Act with respect to mental health services; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, today I introduce, along with Senators MURKOWSKI and WHITEHOUSE, the Community Mental Health Services Improvement Act. For decades, we have known that people suffering from mental illness die sooner—on average 25 years sooner—and have higher rates of disability than the general population. People with mental illness are at greater risk of preventable health conditions such as heart disease and diabetes. With this legislation, we are taking steps to address these disturbing trends.

We know that mental health and physical health are inter-related. Yet historically mental health and physical health have been treated separately. This legislation would integrate care in one setting.

In a recent survey, 91 percent of community mental health centers said that improving the quality of health care is a priority. However, only one-third have the capacity to provide health care on site, and only one-fifth provide medical referrals off site. The centers identified a lack of financial resources as the biggest barrier to integrating treatment.

Accordingly, this legislation provides grants to integrate treatment for mental health, substance abuse, and primary and specialty care. Grantees can use the funds for screenings, basic health care services on site, referrals, or information technology.

This legislation also comprehensively responds to the well identified mental health workforce crisis by providing grants for a wide range of innovative recruitment and retention efforts, including loan forgiveness and repayment programs, to placement and support for new mental health professionals, and expanded mental health education and training programs.

Finally, this legislation provides grants for tele-mental health in medically underserved areas, and invests in health IT for mental health providers. These proposals address the twin goals of improving the quality of mental

health treatment while expanding access to that treatment in rural and underserved areas.

This bipartisan legislation has the overwhelming support of the mental health community. It has been endorsed by the National Council for Community Behavioral Healthcare, the National Alliance on Mental Illness, Mental Health America, the Campaign for Mental Health Reform, and the American Psychological Association. I am especially grateful for the support of the Rhode Island Council of Community Mental Health Organizations, whose members treat close to 15,000 Rhode Islanders of all ages.

As a member of the Senate Committee on Health, Education, Labor, and Pensions, I look forward to our upcoming work on reforming our nation's health care system—and including important improvements to prevent and treat mental and physical illnesses and conditions. It is my hope that this year we can truly begin to address the challenge of comprehensively improving and expanding access to mental health services.

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

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

S. 1188

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Community Mental Health Services Improvement Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) almost 60,000,000 Americans, or one in four adults and one in five children, have a mental illness that can be diagnosed and treated in a given year;

(2) mental illness costs our economy more than \$80,000,000,000 annually, accounting for 15 percent of the total economic burden of disease;

(3) alcohol and drug abuse contributes to the death of more than 100,000 people and costs society upwards of half a trillion dollars a year;

(4) individuals with serious mental illness die on average 25 years sooner than individuals in the general population; and

(5) community mental and behavioral health organizations provide cost-efficient and evidence-based treatment and care for millions of Americans with mental illness and addiction disorders.

SEC. 3. CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTINGS.

Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb-31 et seq.) is amended by adding at the end the following:

“SEC. 520K. GRANTS FOR CO-LOCATING PRIMARY AND SPECIALTY CARE IN COMMUNITY-BASED MENTAL HEALTH SETTINGS.

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a qualified community mental health program defined under section 1913(b)(1).

“(2) SPECIAL POPULATIONS.—The term ‘special populations’ refers to the following 3 groups:

“(A) Children and adolescents with mental and emotional disturbances who have co-occurring primary care conditions and chronic diseases.

“(B) Adults with mental illnesses who have co-occurring primary care conditions and chronic diseases.

“(C) Older adults with mental illnesses who have co-occurring primary care conditions and chronic diseases.

“(b) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration and in coordination with the Director of the Health Resources and Services Administration, shall award grants to eligible entities to establish demonstration projects for the provision of coordinated and integrated services to special populations through the co-location of primary and specialty care services in community-based mental and behavioral health settings.

“(c) APPLICATION.—To be eligible to receive a grant under this section, an eligible entity shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may require. Each such application shall include—

“(1) an assessment of the primary care needs of the patients served by the eligible entity and a description of how the eligible entity will address such needs; and

“(2) a description of partnerships, cooperative agreements, or other arrangements with local primary care providers, including community health centers, to provide services to special populations.

“(d) USE OF FUNDS.—

“(1) IN GENERAL.—For the benefit of special populations, an eligible entity shall use funds awarded under this section for—

“(A) the provision, by qualified primary care professionals on a reasonable cost basis, of—

“(i) primary care services on site at the eligible entity;

“(ii) diagnostic and laboratory services; or

“(iii) adult and pediatric eye, ear, and dental screenings;

“(B) reasonable costs associated with medically necessary referrals to qualified specialty care professionals as well as to other coordinators of care or, if permitted by the terms of the grant, for the provision, by qualified specialty care professionals on a reasonable cost basis on site at the eligible entity;

“(C) information technology required to accommodate the clinical needs of primary and specialty care professionals; or

“(D) facility improvements or modifications needed to bring primary and specialty care professionals on site at the eligible entity.

“(2) LIMITATION.—Not to exceed 15 percent of grant funds may be used for activities described in subparagraphs (C) and (D) of paragraph (1).

“(e) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(f) EVALUATION.—Not later than 3 months after a grant or cooperative agreement awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

“(g) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report

that shall evaluate the activities funded under this section. The report shall include an evaluation of the impact of co-locating primary and specialty care in community mental and behavioral health settings on overall patient health status and recommendations on whether or not the demonstration program under this section should be made permanent.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$50,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2014.”.

SEC. 4. INTEGRATING TREATMENT FOR MENTAL HEALTH AND SUBSTANCE ABUSE CO-OCCURRING DISORDERS.

Section 520I of the Public Health Service Act (42 U.S.C. 290bb-40) is amended—

(1) by striking subsection (i) and inserting the following:

“(j) FUNDING.—The Secretary shall make available to carry out this section, \$14,000,000 for fiscal year 2010, \$20,000,000 for fiscal year 2011, and such sums as may be necessary for each of fiscal years 2012 through 2014. Such sums shall be made available in equal amount from amounts appropriated under sections 509 and 520A.”; and

(2) by inserting before subsection (j), the following:

“(i) COMMUNITY MENTAL HEALTH PROGRAM.—For purposes of eligibility under this section, the term ‘private nonprofit organization’ includes a qualified community mental health program as defined under section 1913(b)(1).”.

SEC. 5. IMPROVING THE MENTAL HEALTH WORKFORCE.

(a) NATIONAL HEALTH SERVICE CORPS.—Paragraph (1) of section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)) is amended by inserting “and community mental health centers meeting the criteria specified in section 1913(c)” after “Social Security Act (42 U.S.C. 1395x(aa)).”.

(b) RECRUITMENT AND RETENTION OF MENTAL HEALTH PROFESSIONALS.—Subpart X of part D of title III of the Public Health Service Act (42 U.S.C. 256f et seq.) is amended by adding at the end the following:

“SEC. 340H. GRANTS FOR RECRUITMENT AND RETENTION OF MENTAL HEALTH PROFESSIONALS.

“(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall award grants to States, territories, and Indian tribes or tribal organizations for innovative programs to address the behavioral and mental health workforce needs of designated mental health professional shortage areas.

“(b) USE OF FUNDS.—An eligible entity shall use grant funds awarded under this section for—

“(1) loan forgiveness and repayment programs (to be carried out in a manner similar to the loan repayment programs carried out under subpart III of part D) for behavioral and mental health professionals who—

“(A) agree to practice in designated mental health professional shortage areas;

“(B) are graduates of programs in behavioral or mental health;

“(C) agree to serve in community-based non-profit entities, or as public mental health professionals for the Federal, State or local government; and

“(D) agree to—

“(i) provide services to patients regardless of such patients’ ability to pay; and

“(ii) use a sliding payment scale for patients who are unable to pay the total cost of services;

“(2) behavioral and mental health professional recruitment and retention efforts, with a particular emphasis on candidates

from racial and ethnic minority and medically underserved communities;

“(3) grants or low-interest or no-interest loans for behavioral and mental health professionals who participate in the Medicaid program under title XIX of the Social Security Act to establish or expand practices in designated mental health professional shortage areas, or to serve in qualified community mental health programs as defined in section 1913(b)(1);

“(4) placement and support for behavioral and mental health students, residents, trainees, and fellows or interns; or

“(5) continuing behavioral and mental health education, including distance-based education.

“(c) APPLICATION.—

“(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(2) ASSURANCES.—The application shall include assurances that the applicant will meet the requirements of this subsection and that the applicant possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

“(d) MATCHING REQUIREMENT.—The Secretary may not make a grant to an eligible entity under this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the activities for which the grant was awarded, the entity will provide non-Federal contributions in an amount equal to not less than 35 percent of Federal funds provided under the grant. The entity may provide the contributions in cash or in kind, fairly evaluated, including plant, equipment, and services, and may provide the contributions from State, local, or private sources.

“(e) SUPPLEMENT NOT SUPPLANT.—A grant awarded under this section shall be expended to supplement, and not supplant, the expenditures of the eligible entity and the value of in-kind contributions for carrying out the activities for which the grant was awarded.

“(f) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(g) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant.

“(h) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to behavioral and mental health services in designated mental health professional shortage areas.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$10,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.”.

(c) BEHAVIORAL AND MENTAL HEALTH EDUCATION AND TRAINING PROGRAMS.—Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following:

“SEC. 506C. GRANTS FOR BEHAVIORAL AND MENTAL HEALTH EDUCATION AND TRAINING PROGRAMS.

“(a) DEFINITION.—For the purposes of this section, the term ‘related mental health personnel’ means an individual who—

“(1) facilitates access to a medical, social, educational, or other service; and

“(2) is not a mental health professional, but who is the first point of contact with persons who are seeking mental health services.

“(b) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall establish a program to increase the number of trained behavioral and mental health professionals and related mental health personnel by awarding grants on a competitive basis to mental and behavioral health nonprofit organizations or accredited institutions of higher education to enable such entities to establish or expand accredited mental and behavioral health education programs.

“(c) APPLICATION.—

“(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(2) ASSURANCES.—The application shall include assurances that the applicant will meet the requirements of this subsection and that the applicant possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

“(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to applicants that—

“(1) demonstrate a familiarity with the use of evidenced-based methods in behavioral and mental health services;

“(2) provide interdisciplinary training experiences; and

“(3) demonstrate a commitment to training methods and practices that emphasize the integrated treatment of mental health and substance abuse disorders.

“(e) USE OF FUNDS.—Funds awarded under this section shall be used to—

“(1) establish or expand accredited behavioral and mental health education programs, including improving the coursework, related field placements, or faculty of such programs; or

“(2) establish or expand accredited mental and behavioral health training programs for related mental health personnel.

“(f) REQUIREMENTS.—The Secretary may award a grant to an eligible entity only if such entity agrees that—

“(1) any behavioral or mental health program assisted under the grant will prioritize cultural competency and the recruitment of trainees from racial and ethnic minority and medically underserved communities; and

“(2) with respect to any violation of the agreement between the Secretary and the entity, the entity will pay such liquidated damages as prescribed by the Secretary.

“(g) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(h) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant.

“(i) REPORT.—Not later than 5 years after the date of enactment of this section, the

Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to behavioral and mental health services in designated mental health professional shortage areas.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$4,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.”.

SEC. 6. IMPROVING ACCESS TO MENTAL HEALTH SERVICES IN MEDICALLY-UNDERSERVED AREAS.

Subpart 3 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb-31 et seq.), as amended by section 3, is amended by inserting after section 520A the following:

“SEC. 520B. GRANTS FOR TELE-MENTAL HEALTH IN MEDICALLY-UNDERSERVED AREAS.

“(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall award grants to eligible entities to provide tele-mental health in medically underserved areas.

“(b) ELIGIBLE ENTITY.—To be eligible for assistance under the program under subsection (a), an entity shall be a qualified community mental health program (as defined in section 1913(b)(1)).

“(c) APPLICATION.—

“(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

“(2) ASSURANCES.—The application shall include assurances that the applicant will meet the requirements of this subsection and that the applicant possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

“(d) USE OF FUNDS.—An eligible entity shall use funds received under a grant under this section for—

“(1) the provision of tele-mental health services; or

“(2) infrastructure improvements for the provision of tele-mental health services.

“(e) GEOGRAPHIC DISTRIBUTION.—The Secretary shall ensure that grants awarded under this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(f) EVALUATION.—Not later than 3 months after a grant awarded under this section expires, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant.

“(g) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report that shall evaluate the activities funded under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$20,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.”.

SEC. 7. IMPROVING HEALTH INFORMATION TECHNOLOGY FOR MENTAL HEALTH PROVIDERS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 5(c), is further amended by adding at the end the following:

"SEC. 506D. IMPROVING HEALTH INFORMATION TECHNOLOGY FOR MENTAL HEALTH PROVIDERS.

"(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Veterans Affairs, shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration and the National Coordinator for Health Information Technology to—

"(1) develop and implement a plan for ensuring that various components of the National Health Information Infrastructure, including data and privacy standards, electronic health records, and community and regional health networks, address the needs of mental health and substance abuse treatment providers; and

"(2) finance related infrastructure improvements, technical support, personnel training, and ongoing quality improvements.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014."

By Mr. WYDEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mr. MENENDEZ, Mr. MCCAIN, Mrs. GILLIBRAND, and Mr. ENSIGN):

S. 1192. A bill to restrict any State or local jurisdiction from imposing a new discriminatory tax on mobile wireless communications services, providers, or property; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to join my colleague Senator WYDEN in reintroducing legislation that will stop the increasing financial burden being placed on wireless consumers by discriminatory taxes. On average, the typical consumer pays 15.2 percent of his/her total wireless bill in Federal, State, and local taxes, fees and surcharges—this is compared to the 7.07 percent average tax rate for other goods and services.

The Mobile Wireless Tax Fairness Act of 2009 would ensure that these tax rates don't increase further by prohibiting States and local governments from imposing any new discriminatory tax on mobile services, mobile service providers, or mobile service property for a period of 5 years. The bill defines "new discriminatory tax" as a tax imposed on mobile services, providers, or property that is not generally imposed on other types of services or property, or that is generally imposed at a lower rate.

The wireless era has changed the way the world communicates. To date, there are more than 270 million wireless subscribers in the United States, and consumers used more than 2.2 trillion minutes of airtime from July 2007 to June 2008—that is more than 6 billion minutes per day! And with this growth, more people are using the cell phone as a primary communication device as well as for data and Internet services—approximately 20 percent of households have "cut the cord" and use cell phones exclusively. The increased mobility and access wireless communications provide have improved our lives, our safety, and the efficiency of our work and businesses. It is esti-

mated that the productivity value of all mobile wireless services was worth \$185 billion in 2005 alone.

However, as more consumers and businesses embrace wireless technologies and applications, more States and local governments are embracing it as a revenue source and applying these excessive and discriminatory taxes, which show up on consumers' bills each month. In fact, the effective rate of taxation on wireless services has increased four times faster than the rate on other taxable goods and services between January 2003 and January 2007.

These excessive and discriminatory taxes discourage wireless adoption and use, primarily with low-income individuals and families that still view a cellular phone as a luxury when many Americans consider it a necessity. By banning these taxes, we can equalize the taxation of the wireless industry with that of other goods and services and protect the wireless consumer from the weight of exorbitant fees, surcharges, and general business taxes. We cannot allow this essential and innovative industry as well as the consumers who benefit from its amazing services and applications to suffer excessive tax rates.

Placing a moratorium on new discriminatory wireless taxes will ensure that consumers continue to reap the benefits of wireless services. Congress took similar action with the Internet—passing the Internet Tax Freedom Act Amendments Act of 2007 last session—because of the incredible impact the Internet will continue to have on consumers and businesses alike. The future of wireless is just as bright and that is why we must ensure its continued growth.

It is confounding that telecommunications, one of the most essential components of our economy and our daily lives, is one of the most highly taxed sectors. That is why I sincerely hope that my colleagues join Senator WYDEN and me in supporting this critical bipartisan legislation so we can continue our efforts to curtail discriminatory taxes on these vital services so that all Americans can leverage the benefits they offer. I would like to thank Senator MCCAIN for his past leadership on this issue and for cosponsoring this consumer-friendly legislation.

By Ms. SNOWE (for herself and Ms. KLOBUCHAR):

S. 1193. A bill to amend title 49, United States Code, to enhance aviation safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to join with my colleague, Senator KLOBUCHAR, to introduce legislation that I believe continues to be crucial in the effort to improve aviation safety. Before I begin, I want to recognize the deliberate and unflagging efforts of Senator KLOBUCHAR, whose commitment to improve the safety of

commercial aviation in this country is so admirable.

We all remember last spring's news: a U.S. carrier continued flying aircraft even though critical safety checks involving cracks in their fuselages had not been performed on approximately 50 jets. In fact, an independent review concluded that these flights potentially endangered over six million passengers. What was the punitive or disciplinary action taken against the inspector who condoned—in fact, encouraged—those aircraft to continue flying? Nothing. The PMI, or supervising inspector, continued in his role. Also, as many of you will recall, last April, American Airlines cancelled nearly 2,000 flights in order to catch up on inspections of aircraft wiring—inspections that should have been performed previously under its agreement with the FAA.

This startling news was compounded by a Department of Transportation Inspector General's report in June disclosing so-called safety inspectors are turning a blind eye to violations. Now, according to a New York Times article dated June 4, an inspector reported to his superiors that Colgan Air had been having trouble with their most recent purchase, the Bombardier Q400. The same aircraft that crashed outside of Buffalo, New York this past March. What did his superiors do with this information? They transferred the inspector to a different job, and reportedly buried the report.

The FAA's overarching role is to serve as a protector of the public trust; not as a public relations and management tool for the commercial airlines. What I find most offensive throughout these reports is the willingness by the FAA to ignore safety concerns or inspection violations, to presume that due to the tremendous level of success regarding safety protections for so long, they no longer are required to follow the procedures that created that high level of safety, instead, as the Inspector General's report indicated, they want to "avoid a negative effect on the FAA" by enforcing those measures.

That is why Senator KLOBUCHAR and I are committed to closing the revolving door between the airlines and the FAA. We need to codify our safety expectations into law and hold anyone who tries to undermine the integrity of the safety process accountable. By establishing a cooling-off period so that FAA inspectors cannot immediately go to work for an airline they used to inspect, and demanding that the FAA establish a national review team of experienced inspectors to conduct periodic, unannounced audits of FAA air carrier inspection facilities will guarantee that aircraft inspections are carried out in a rigorous and timely fashion. The American people, not the airlines, are the primary responsibility of the FAA. It is my hope that these provisions will assist in returning the FAA to their core mission: safety.

Ms. CANTWELL (for herself, Ms. SNOWE, Mr. ROCKEFELLER, and Mrs. HUTCHISON):

S. 1194. A bill to reauthorize the Coast Guard for fiscal years 2010 and 2011, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, for countless communities around the country, our oceans are the heartbeat of their histories and economies. In fact, according to a report by the Joint Oceans Commission, healthy oceans and coasts are an important means of transportation, trade, and national security. Ocean-dependent industries generate about \$138 billion and support millions of jobs in the United States' economy.

According to the National Ocean Economic Project, 30 U.S. coastal States accounted for 82 percent of total population and 81 percent of all U.S. jobs in 2006. In my home State of Washington, the Port of Seattle's facilities and activities alone support 190,000 jobs, and the State has 3,000 fishing vessels that employ 10,000 fishermen.

There is no group that is more important to the health and safety of our ports, fishing industry, and maritime community than the U.S. Coast Guard. The brave men and women of the U.S. Coast Guard are charged with many missions—from serving as our environmental stewards, performing search and rescue missions, and protecting us from terrorism, to helping clean up oil spills and enforcing fisheries laws. They are largely responsible for keeping these coastal economic engines running, and have proved time and time again that they are, as their motto says, "Always ready."

But for the Coast Guard to do its job Congress needs to support those who serve in its ranks. We have a responsibility to ensure the Coast Guard has the tools it needs to carry out the missions of today, while looking ahead to the challenges of tomorrow.

The bill I am introducing today, The Coast Guard Authorization Act for fiscal years 2010 and 2011, is designed to help the Coast Guard move toward the future, and ensure our maritime industries remain the clean and safe economic engine our nation's coastal communities have depended on for generations.

As the U.S. experiences major oil spills, tropical storms, hurricanes, and terrorism, our maritime economy faces ever-present threats. Congress needs to uphold its end of the bargain and provide the legislative backing the Coast Guard needs to do its job, and do its job well.

This bill gives the Coast Guard greater authority to work with international maritime authorities, get better access to global safety and security information, and work more cooperatively with other nations on law enforcement; allows the Coast Guard to rework its command structure and increase its alignment with other armed

forces; better supports the men and women who serve in the U.S. Coast Guard by allowing greater reimbursement for medical-related expenses and allowing Coast Guard service-members to participate in the Armed Forces Retirement Home system; and directs the Coast Guard to conduct a thorough cost-benefit analysis for recapitalizing its polar icebreaker fleet so the service can prepare for future mission demands in the Arctic.

This bill also contains the most ambitious reform of its acquisitions program in the Coast Guard's history. The Coast Guard is struggling right now to replace their rapidly aging fleet of ships, aircraft, and facilities. At a cost of \$24 billion, the Deepwater program is the Coast Guard's largest and most complex acquisition program ever. Congress has a responsibility to ensure there is transparency and oversight so this program is as efficient and effective as possible.

Unfortunately, the Coast Guard's Deepwater program has experienced major failures and setbacks. The program utilized a private sector lead systems integrator, LSI, known as Integrated Coast Guard Systems, ICGS, to oversee acquisition of a "system of systems." When the Deepwater contract was originally awarded in 2002, the Coast Guard did not have the personnel within their ranks to manage such a large contract. Congress was told that outsourcing that role to industry would save the Coast Guard time and money over the long run.

That approach, which may have seemed innovative at the time, has not produced the promised results. Instead of cost and time savings, we have seen cost overruns, schedule delays, less competition and inadequate technical oversight.

The Department of Homeland Security Inspector General, IG, released three reports in 2006 and early 2007 detailing some of the problems with Deepwater, including problems with electronics equipment, crucial design flaws and cost overruns created by a faulty contract structure and lack of oversight, and serious issues with the 123-foot cutter conversion project.

This legislation wipes the slate clean and makes fundamental changes to the Coast Guard's acquisition program. It requires the Coast Guard to abandon the industry-led Lead Systems Integrator and get back to basics—full and open competition for all future assets.

It requires a completely new "analysis of alternatives" for all future Deepwater acquisitions to ensure that the Coast Guard is getting the assets best-suited for their needs.

It requires the Coast Guard to follow a rigorous acquisitions process to make sure taxpayer dollars are spent wisely.

And, it gives the Coast Guard the tools it needs to manage acquisitions effectively, including requiring the Coast Guard to make internal management changes to ensure open competition, increase technical oversight and improve reporting to Congress.

This legislation takes major steps towards getting the Coast Guard the assets they need while ensuring responsible management of taxpayer dollars. I look forward to working with my colleagues to enact the changes I am proposing today so we can get this program back on track and help the Coast Guard accomplish its missions.

If we fail to pass legislation, we are doing a major disservice to those very people we depend on. We will do so as they continue to place their lives at risk while they perform the mission of the Coast Guard.

This bill is good for taxpayers, good for the Coast Guard, and good for every American depending on them to be, "Always ready."

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

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

S. 1194

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard Authorization Act for Fiscal Years 2010 and 2011".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

TITLE II—ADMINISTRATION

Sec. 201. Authority to distribute funds through grants, cooperative agreements, and contracts to maritime authorities and organizations.

Sec. 202. Assistance to foreign governments and maritime authorities.

Sec. 203. Cooperative agreements for industrial activities.

Sec. 204. Defining Coast Guard vessels and aircraft.

TITLE III—ORGANIZATION

Sec. 301. Vice commandant; vice admirals.

Sec. 302. Number and distribution of commissioned officers on the active duty promotion list.

TITLE IV—PERSONNEL

Sec. 401. Leave retention authority.

Sec. 402. Legal assistance for Coast Guard reservists.

Sec. 403. Reimbursement for certain medical related expenses.

Sec. 404. Reserve commissioned warrant officer to lieutenant program.

Sec. 405. Enhanced status quo officer promotion system.

Sec. 406. Appointment of civilian Coast Guard judges.

Sec. 407. Coast Guard participation in the Armed Forces Retirement Home system.

TITLE V—ACQUISITION REFORM

Sec. 501. Chief Acquisition Officer.

Sec. 502. Acquisitions.

"CHAPTER 15—ACQUISITIONS

"SUBCHAPTER 1—GENERAL PROVISIONS

"Sec.

- “561. Acquisition directorate
- “562. Senior acquisition leadership team
- “563. Improvements in Coast Guard acquisition management
- “564. Recognition of Coast Guard personnel for excellence in acquisition
- “565. Prohibition on use of lead systems integrators
- “566. Required contract terms
- “567. Department of Defense consultation
- “568. Undefined contractual actions

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

- “Sec.
- “571. Identification of major system acquisitions
- “572. Acquisition
- “573. Preliminary development and demonstration
- “574. Acquisition, production, deployment, and support
- “575. Acquisition program baseline breach

“SUBCHAPTER 3—DEFINITIONS

- “Sec.
- “581. Definitions”
- Sec. 503. Report and guidance on excess pass-through charges.

TITLE VI—SHIPPING AND NAVIGATION

- Sec. 601. Technical amendments to chapter 313 of title 46, United States Code.
- Sec. 602. Clarification of rulemaking authority.
- Sec. 603. Coast Guard maintenance of LORAN-C navigation system.
- Sec. 604. Icebreakers.
- Sec. 605. Vessel size limits.

TITLE VII—VESSEL CONVEYANCE

- Sec. 701. Short title.
- Sec. 702. Conveyance of Coast Guard vessels for public purposes.

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for each of fiscal years 2010 and 2011 as follows:

(1) For the operation and maintenance of the Coast Guard, \$6,556,188,000, of which \$24,500,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$1,383,980,000, of which \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended; such funds appropriated for personnel compensation and benefits and related costs of acquisition, construction, and improvements shall be available for procurement of services necessary to carry out the Integrated Deepwater Systems program.

(3) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,361,245,000.

(4) For environmental compliance and restoration functions under chapter 19 of title 14, United States Code, \$13,198,000.

(5) For research, development, test, and evaluation programs related to maritime technology, \$19,745,000.

(6) For operation and maintenance of the Coast Guard reserve program, \$133,632,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized an end-of-year strength of active duty personnel of 49,954 as of September 30, 2010, and 52,452 as of September 30, 2011.

(b) MILITARY TRAINING STUDENT LOADS.—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,500 student years for fiscal year 2010, and 2,625 student years for fiscal year 2011.

(2) For flight training, 170 student years for fiscal year 2010 and 179 student years for fiscal year 2011.

(3) For professional training in military and civilian institutions, 350 student years for fiscal year 2010 and 368 student years for fiscal year 2011.

(4) For officer acquisition, 1,300 student years for fiscal year 2010 and 1,365 student years for fiscal year 2011.

TITLE II—ADMINISTRATION

SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS TO MARITIME AUTHORITIES AND ORGANIZATIONS.

Section 149 of title 14, United States Code, is amended by adding at the end the following:

“(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant may, after consultation with the Secretary of State, make grants to, or enter into cooperative agreements, contracts, or other agreements with, international maritime organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety and environmental requirements, classification, and port state or flag state law enforcement or oversight.”.

SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME AUTHORITIES.

Section 149 of title 14, United States Code, as amended by section 201, is further amended by adding at the end the following:

“(d) AUTHORIZED ACTIVITIES.—

“(1) The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for—

“(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(B) the activities of maritime authority liaison teams of foreign governments making reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(C) seminars and conferences involving members of maritime authorities of foreign governments;

“(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and

“(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).

“(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.”.

SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES.

Section 151 of title 14, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “All orders”; and

(2) by adding at the end the following:

“(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.—Under this section, the

Coast Guard industrial activities may accept orders and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.”.

SEC. 204. DEFINING COAST GUARD VESSELS AND AIRCRAFT.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by inserting after section 638 the following new section:

“§ 638a. Coast Guard vessels and aircraft defined

“For the purposes of sections 637 and 638 of this title, the term Coast Guard vessels and aircraft means—

“(1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or

“(2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 17 of such title is amended by inserting after the item relating to section 638 the following:

“638a. Coast Guard vessels and aircraft defined.”.

TITLE III—ORGANIZATION

SEC. 301. VICE COMMANDANT; VICE ADMIRALS.

(a) VICE COMMANDANT.—The fourth sentence of section 47 of title 14, United States Code, is amended by striking “vice admiral” and inserting “admiral”.

(b) VICE ADMIRALS.—Section 50 of such title is amended to read as follows:

“§ 50. Vice admirals

“(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

“(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

“(B) shall perform such duties as the Commandant may prescribe.

“(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

“(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

“(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

“(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

“(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

“(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer's retirement, but not for more than 60 days.

“(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

“(2) An officer serving in a grade above rear admiral who holds the permanent grade

of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer's permanent grade.

"(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office."

(c) REPEAL.—Section 50a of such title is repealed.

(d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

"(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

"(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

"(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade."; and

(2) by striking "Area Commander, or Chief of Staff" in subsection (d)(2) and inserting "or Vice Admiral".

(e) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows:

"§ 47. Vice commandant; appointment."

(2) The table of contents for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

"47. Vice Commandant; appointment.";

(B) by striking the item relating to section 50a; and

(C) by striking the item relating to section 50 and inserting the following:

"50. Vice admirals."

(f) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking "subsection" in the fifth sentence and inserting "section".

(g) TREATMENT OF INCUMBENTS; TRANSITION.—

(1) Notwithstanding any other provision of law, the officer who, on the date of enactment of this Act, is serving as Vice Commandant—

(A) shall continue to serve as Vice Commandant;

(B) shall have the grade of admiral with pay and allowances of that grade; and

(C) shall not be required to be reappointed by reason of the enactment of that Act.

(2) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commander, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowance of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral; and

(B) for the purposes of transition, may continue, for not more than 1 year after the date of enactment of this Act, to perform the duties of the officer's former position and any other such duties that the Commandant prescribes.

SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS ON THE ACTIVE DUTY PROMOTION LIST.

(a) IN GENERAL.—Section 42 of title 14, United States Code, is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

"(a) The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.

"(b) The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages:

"(1) 0.375 percent for rear admiral.

"(2) 0.375 percent for rear admiral (lower half).

"(3) 6.0 percent for captain.

"(4) 15.0 percent for commander.

"(5) 22.0 percent for lieutenant commander.

The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of the percentages set forth in paragraphs (1) through (5) and apply that total percentage reduction to any other lower grade or combination of lower grades.

"(c) The Secretary shall, at least once a year, compute the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages of this section to the total number of commissioned officers listed on the current active duty promotion list. In making such calculations, any fraction shall be rounded to the nearest whole number. The number of commissioned officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade."

(2) by striking subsection (e) and inserting the following:

"(e) The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary."; and

(3) by striking the caption of such section and inserting the following:

"§ 42. Number and distribution of commissioned officers on the active duty promotion list".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of such title is amended by striking the item relating to section 42 and inserting the following:

"42. Number and distribution of commissioned officers on the active duty promotion list."

TITLE IV—PERSONNEL

SEC. 401. LEAVE RETENTION AUTHORITY.

Section 701(f)(2) of title 10, United States Code, is amended by inserting "or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. 5121 et seq.)" after "operation".

SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERVISTS.

Section 1044(a)(4) of title 10, United States Code, is amended—

(1) by striking "(as determined by the Secretary of Defense)," and inserting "(as deter-

mined by the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy)."; and

(2) by striking "prescribed by the Secretary of Defense," and inserting "prescribed by Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy.".

SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL EXPENSES.

Section 1074i(a) of title 10, United States Code, is amended—

(1) by striking "IN GENERAL.—In" and inserting "IN GENERAL.—(1) In"; and

(2) by adding at the end the following:

"(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary, and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age."

SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROGRAM.

Section 214(a) of title 14, United States Code, is amended to read as follows:

"(a) The President may appoint temporary commissioned officers—

"(1) in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine; and

"(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers of the Coast Guard Reserve."

SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.

(a) Section 253(a) of title 14, United States Code, is amended—

(1) by inserting "and" after "considered,"; and

(2) by striking "consideration, and the number of officers the board may recommend for promotion" and inserting "consideration".

(b) Section 258 of such title is amended—

(1) by inserting "(a)" before "The Secretary"; and

(2) by adding at the end the following:

"(b) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board—

"(1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

"(2) such other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions. Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title."

(c) Section 259(a) of such title is amended by striking “board” the second place it appears and inserting “board, giving due consideration to the needs of the service for officers with particular skills so noted in the specific direction furnished pursuant to section 258 of this title.”.

(d) Section 260(b) of such title is amended by inserting “to meet the needs of the service (as noted in the specific direction furnished the board under section 258 of this title)” after “qualified for promotion”.

SEC. 406. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES.

Section 875 of the Homeland Security Act of 2002 (6 U.S.C. 455) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) APPOINTMENT OF JUDGES.—The Secretary may appoint civilian employees of the Department of Homeland Security as appellate military judges, available for assignment to the Coast Guard Court of Criminal Appeals as provided for in section 866(a) of title 10, United States Code.”.

SEC. 407. COAST GUARD PARTICIPATION IN THE ARMED FORCES RETIREMENT HOME SYSTEM.

(a) ELIGIBILITY UNDER THE ARMED FORCES RETIREMENT HOME ACT.—Section 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401) is amended—

(1) by striking “does not include the Coast Guard when it is not operating as a service of the Navy.” in paragraph (4) and inserting “has the meaning given such term in section 101(4) of title 10.”;

(2) by striking “and” in paragraph (5)(C);

(3) by striking “Affairs.” in paragraph (5)(D) and inserting “Affairs; and”;

(4) by adding at the end of paragraph (5) the following:

“(E) the Assistant Commandant of the Coast Guard for Human Resources.”; and

(5) by adding at the end of paragraph (6) the following:

“(E) The Master Chief Petty Officer of the Coast Guard.”.

(b) DEDUCTIONS.—

(1) Section 2772 of title 10, United States Code, is amended—

(A) by striking “of the military department” in subsection (a);

(B) by striking “Armed Forces Retirement Home Board” in subsection (b) and inserting “Chief Operating Officer of the Armed Forces Retirement Home”; and

(C) by striking subsection (c).

(2) Section 1007(i) of title 37, United States Code, is amended—

(A) by striking “Armed Forces Retirement Home Board,” in paragraph (3) and inserting “Chief Operating Officer of the Armed Forces Retirement Home.”; and

(B) by striking “does not include the Coast Guard when it is not operating as a service of the Navy.” in paragraph (4) and inserting “has the meaning given such term in section 101(4) of title 10.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first pay period beginning on or after January 1, 2010.

TITLE V—ACQUISITION REFORM

SEC. 501. CHIEF ACQUISITION OFFICER.

(a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by adding at the end the following:

“§ 55. Chief Acquisition Officer

“(a) IN GENERAL.—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved). The Chief

Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual’s primary duty.

“(b) QUALIFICATIONS.—The Chief Acquisition Officer shall be an acquisition professional with a Level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—

“(1) the program executive officer;

“(2) the program manager of a Level 1 or Level 2 acquisition project or program;

“(3) the deputy program manager of a Level 1 or Level 2 acquisition; or

“(4) a combination of such positions.

“(c) FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.—The functions of the Chief Acquisition Officer include—

“(1) monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

“(2) maximizing the use of full and open competition at the prime contract and sub-contract levels in the acquisition of property, capabilities, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of competitive proposals from responsible sources to fulfill the Government’s requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property or service procured;

“(3) making acquisition decisions in concurrence with the technical authority, or technical authorities, as appropriate, of the Coast Guard, as designated by the Commandant, consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;

“(4) ensuring the use of detailed performance specifications in instances in which performance based contracting is used;

“(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

“(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

“(7) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

“(8) developing strategies and specific plans for hiring, training, and professional development; and

“(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 14, United States Code, is amended by adding at the end the following:

“55. Chief Acquisition Officer.”.

(c) SELECTION DEADLINE.—As soon as practicable after the date of enactment of this Act, but no later than October 1, 2011, the Commandant of the Coast Guard shall select a Chief Acquisition Officer under section 55 of title 14, United States Code.

SEC. 502. ACQUISITIONS.

(a) IN GENERAL.—Part I of title 14, United States Code, is amended by inserting after chapter 13 the following:

“CHAPTER 15. ACQUISITIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“561. Acquisition directorate

“562. Senior acquisition leadership team

“563. Improvements in Coast Guard acquisition management

“564. Recognition of Coast Guard personnel for excellence in acquisition

“565. Prohibition on use of lead systems integrators

“566. Required contract terms

“567. Department of Defense consultation

“568. Unfinalized contractual actions

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. Identification of major system acquisitions

“572. Acquisition

“573. Preliminary development and demonstration

“574. Acquisition, production, deployment, and support

“575. Acquisition program baseline breach

“SUBCHAPTER 3—DEFINITIONS

“Sec.

“581. Definitions

“SUBCHAPTER 1—GENERAL PROVISIONS

“§ 561. Acquisition directorate

“(a) ESTABLISHMENT.—The Commandant of the Coast Guard shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

“(b) MISSION.—The mission of the acquisition directorate is—

“(1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and

“(2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard’s missions and deliver the best value products and services to the Nation.

“§ 562. Senior acquisition leadership team

“(a) ESTABLISHMENT.—The Commandant shall establish a senior acquisition leadership team within the Coast Guard comprised of—

“(1) the Vice Commandant;

“(2) the Deputy and Assistant Commandants;

“(3) appropriate senior staff members of each Coast Guard directorate;

“(4) appropriate senior staff members for each assigned field activity or command; and

“(5) any other Coast Guard officer or employee designated by the Commandant.

“(b) FUNCTION.—The senior acquisition leadership team shall—

“(1) meet at the call of the Commandant at such places and such times as the Commandant may require;

“(2) provide advice and information on operational and performance requirements of the Coast Guard;

“(3) identify gaps and vulnerabilities in the operational readiness of the Coast Guard;

“(4) make recommendations to the Commandant and the Chief Acquisition Officer to remedy the identified gaps and vulnerabilities in the operational readiness of the Coast Guard; and

“(5) contribute to the development of a professional, experienced acquisition workforce by providing acquisition-experience tours of duty and educational development for officers and employees of the Coast Guard.

“§ 563. Improvements in Coast Guard acquisition management

“(a) PROJECT AND PROGRAM MANAGERS.—

“(1) PROJECT OR PROGRAM MANAGER DEFINED.—In this section, the term ‘project or program manager’ means an individual designated—

“(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and

“(B) to manage cost, schedule, and performance of the acquisition or project or program.

“(2) LEVEL 1 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

“(3) LEVEL 2 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

“(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition programs and projects. The guidance shall address, at a minimum—

“(1) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions; and

“(2) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program.

“(c) ACQUISITION WORKFORCE.—

“(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard’s acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

“(2) REQUIRED POSITIONS.—The Commandant shall ensure that members of the acquisition workforce have expertise, education, and training in at least 1 of the following acquisition career fields:

“(A) Acquisition logistics.

“(B) Auditing.

“(C) Business, cost estimating, and financial management.

“(D) Contracting.

“(E) Facilities engineering.

“(F) Industrial or contract property management.

“(G) Information technology.

“(H) Manufacturing, production, and quality assurance.

“(I) Program management.

“(J) Purchasing.

“(K) Science and technology.

“(L) Systems planning, research, development, and engineering.

“(M) Test and evaluation.

“(3) ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.—

“(A) IN GENERAL.—For purposes of sections 3304, 5333, and 5753 of title 5, the Commandant may—

“(i) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

“(ii) use the authorities in such sections to recruit and appoint highly qualified person directly to positions so designated.

“(B) LIMITATION.—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.

“(d) MANAGEMENT INFORMATION SYSTEM.—

“(1) IN GENERAL.—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

“(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

“(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

“(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

“(e) CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

“(1) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

“(2) publish information on such career paths.

“§ 564. Recognition of Coast Guard personnel for excellence in acquisition

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.

“(b) ELEMENTS.—The program shall include—

“(1) specific award categories, criteria, and eligibility and manners of recognition;

“(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

“(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

“(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

“§ 565. Prohibition on use of lead systems integrators

“(a) IN GENERAL.—

“(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

“(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with the competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations.

“(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

“(b) EXCEPTIONS.—

“(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program, the C4ISR projects directly related to the Integrated Deepwater Program, and National Security Cutters 2 and 3 if the Secretary of Homeland Security certifies that—

“(A) the acquisition is in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations; and

“(B) the acquisition and the use of a private sector entity as a lead systems integrator for the acquisition is in the best interest of the Federal Government.

“(2) TERMINATION DATE FOR EXCEPTIONS.—Except for the modification of delivery or task orders pursuant to Parts 4 and 42 of the Federal Acquisition Regulations, the Commandant may not use a private sector entity as a lead systems integrator after the earlier of—

“(A) September 30, 2012; or

“(B) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient contracting personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead system integrator in an efficient and cost-effective manner.

“§ 566. Required contract terms

“(a) IN GENERAL.—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—

“(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

“(2) requires that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

“(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

“(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and

“(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

“(b) PROHIBITED CONTRACT PROVISIONS.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

“(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

“(d) DEEPWATER TECHNICAL AUTHORITIES.—The Commandant shall maintain or designate the technical authorities to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of this title.

“§ 567. Department of Defense consultation

“(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

“(b) INTER-SERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

“(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

“(2) the use, as appropriate, of Navy technical expertise; and

“(3) the exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Commands, to facilitate the development of organic capabilities in the Coast Guard.

“(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

“§ 568. Undefinitized contractual actions

“(a) IN GENERAL.—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

“(b) REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

“(c) REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

“(1) DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.—A contracting officer of the Coast Guard may not enter

into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

“(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

“(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

“(2) LIMITATION ON OBLIGATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(3) WAIVER.—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

“(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

“(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

“(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

“(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(4) LIMITATION ON APPLICATION.—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

“(d) INCLUSION OF NONURGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(e) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(f) ALLOWABLE PROFIT.—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

“(1) the possible reduced cost risk of the contractor with respect to costs incurred

during performance of the contract before the final price is negotiated; and

“(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

“(g) DEFINITIONS.—In this section:

“(1) UNDEFINITIZED CONTRACTUAL ACTION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘undefinitized contractual action’ means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

“(B) EXCLUSION.—The term ‘undefinitized contractual action’ does not include contractual actions with respect to—

“(i) foreign military sales;

“(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

“(iii) special access programs.

“(2) QUALIFYING PROPOSAL.—The term ‘qualifying proposal’ means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“§ 571. Identification of major system acquisitions

“(a) IN GENERAL.—

“(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for acquisitions under this subchapter.

“(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

“(A) completes a mission analysis that—

“(i) identifies any gaps in capability; and

“(ii) develops a clear mission need; and

“(B) prepares a preliminary affordability assessment for the project or program.

“(b) ELEMENTS.—

“(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

“(2) ASSESSMENT OF TRADE-OFFS.—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

“(c) HUMAN RESOURCE CAPITAL PLANNING.—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs for any such project or program.

“(d) DHS ACQUISITION APPROVAL.—A Level 1 or Level 2 acquisition project or program may not be implemented unless it is approved by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.

“§ 572. Acquisition

“(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program approved under section 571(d) until the Commandant—

“(1) clearly defines the operational requirements for the project or program;

“(2) establishes the feasibility of alternatives;

“(3) develops an acquisition project or program baseline;

“(4) produces a life-cycle cost estimate; and

“(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

“(b) ANALYSIS OF ALTERNATIVES.—

“(1) IN GENERAL.—The Commandant shall conduct an analysis of alternatives for the asset or capability to be acquired in an analyze and select phase of the acquisition process.

“(2) REQUIREMENTS.—The analysis of alternatives shall be conducted by a Federally-funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise and has no substantial financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include—

“(A) an assessment of the technical maturity, and technical and other risks;

“(B) an examination of capability, interoperability, and other disadvantages;

“(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard's overall performance needs;

“(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

“(E) when an alternative is an existing asset or prototype, an evaluation of relevant safety and performance records and costs;

“(F) a calculation of life-cycle costs including—

“(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;

“(ii) an examination of likely production and deployment costs and levels of uncertainty associated with such estimated costs;

“(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;

“(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

“(v) such additional measures as the Commandant or the Secretary of Homeland Security determines to be necessary for appropriate evaluation of the asset; and

“(G) the business case for each viable alternative.

“(c) TEST AND EVALUATION MASTER PLAN.—

“(1) IN GENERAL.—For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer shall approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.

“(2) TEST AND EVALUATION STRATEGY.—The master plan shall—

“(A) set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and subsystem-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or subsystem of the capability or asset is approved for production; and

“(B) require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.

“(3) OTHER COMPONENTS OF THE MASTER PLAN.—At a minimum, the master plan shall identify—

“(A) the key performance parameters to be resolved through the integrated test and evaluation strategy;

“(B) critical operational issues to be assessed in addition to the key performance parameters;

“(C) specific development test and evaluation phases and the scope of each phase;

“(D) modeling and simulation activities to be performed, if any, and the scope of such activities;

“(E) early operational assessments to be performed, if any, and the scope of such assessments;

“(F) operational test and evaluation phases;

“(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and

“(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

“(4) UPDATE.—The Chief Acquisition Officer shall approve an updated master plan whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.

“(5) LIMITATION.—The Coast Guard may not—

“(A) proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or

“(B) award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.

“(d) LIFE-CYCLE COST ESTIMATES.—

“(1) IN GENERAL.—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each Level 1 or Level 2 acquisition to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

“(2) TYPES OF ESTIMATES.—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

“(3) REQUIRED UPDATES.—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

“(e) DHS ACQUISITION APPROVAL.—A project or program may not enter the obtain phase under section 573 unless the Department of Homeland Security Acquisition Review Board or the Joint Review Board (or other entity to which such responsibility is delegated by the Secretary of Homeland Security) has approved the analysis of alternatives for the project. The Joint Review Board may also approve the low rates initial production quantity for the project or program if such an initial production quantity is planned by the acquisition project or program and deemed appropriate by the Joint Review Board.

“§ 573. Preliminary development and demonstration

“(a) IN GENERAL.—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life cycle cost estimates, and the development

and demonstration requirements are met to confirm that the projects or programs meet the requirements described in the mission-needs statement and the operational-requirements document and the following development and demonstration objectives:

“(1) To demonstrate that the most promising design, manufacturing, and production solution is based upon a stable, producible, and cost-effective product design.

“(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

“(3) To ensure that the product design is mature enough to commit to full production and deployment.

“(b) TESTS AND EVALUATIONS.—

“(1) IN GENERAL.—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset for which a master plan has been prepared under section 572(c)(1).

“(2) USE OF THIRD PARTIES.—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluating the capabilities or assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

“(3) COMMUNICATION OF SAFETY CONCERNS.—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.

“(4) ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.—If operational test and evaluation on a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

“(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

“(B) notify the Chief Acquisition Officer and include in such notification—

“(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;

“(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and

“(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.

“(c) TECHNICAL CERTIFICATION.—

“(1) IN GENERAL.—The Commandant shall—ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.

“(2) TEMPEST TESTING.—The Commandant shall—

“(A) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be tested in accordance with master plan standards and communications security standards by an independent third party that is authorized by the Federal Government to perform such testing; and

“(B) certify that the assets meet all applicable TEMPEST requirements.

“(3) VESSEL CLASSIFICATION.—The Commandant shall cause each cutter, other than the National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 is to be classed by the American Bureau of Shipping before final acceptance.

“(d) ACQUISITION DECISION.—The Commandant may not proceed to full scale production, deployment, and support of a Level 1 or Level 2 acquisition project or program unless the Department of Homeland Security Acquisition Review Board has verified that the delivered asset or system meets the project or program performance and cost goals.

“§ 574. Acquisition, production, deployment, and support

“(a) IN GENERAL.—The Commandant shall—

“(1) ensure there is a stable and efficient production and support capability to develop an asset or system;

“(2) conduct follow on testing to confirm and monitor performance and correct deficiencies; and

“(3) conduct acceptance tests and trails upon the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.

“(b) ELEMENTS.—The Commandant shall—

“(1) execute the productions contracts;

“(2) ensure the delivered products meet operational cost and schedules requirements established in the acquisition program baseline;

“(3) validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the system; and

“(4) prepare a project or program transition plan to enter into programmatic sustainment, operations, and support.

“§ 575. Acquisition program baseline breach

“(a) IN GENERAL.—The Commandant shall submit a report to the appropriate congressional committees as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

“(1) a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

“(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

“(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the acquisition program baseline.

“(b) CONTENT.—The report submitted under subsection (a) shall include—

“(1) a detailed description of the breach and an explanation of its cause;

“(2) the projected impact to performance, cost, and schedule;

“(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

“(4) the updated acquisition schedule and the complete history of changes to the original schedule;

“(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

“(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

“(7) a description of how progress in the remediation plan will be measured and monitored.

“(c) SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.—If a likely cost overrun is greater than 25 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

“(1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;

“(2) there are no alternatives to such capability or asset or capability or asset class which will provide equal or greater capability in both a more cost-effective and timely manner;

“(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

“(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

“SUBCHAPTER 3—DEFINITIONS

“§ 581. Definitions

“In this chapter:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

“(2) CHIEF ACQUISITION OFFICER.—The term ‘Chief Acquisition Officer’ means the officer appointed under section 55 of this title.

“(3) COMMANDANT.—The term ‘Commandant’ means the Commandant of the Coast Guard.

“(4) JOINT REVIEW BOARD.—The term ‘Joint Review Board’ means the Department of Homeland Security’s Investment Review Board, Joint Requirements Council, or other entity within the Department designated by the Secretary as the Joint Review Board for purposes of this chapter.

“(5) LEVEL 1 ACQUISITION.—The term ‘Level 1 acquisition’ means—

“(A) an acquisition by the Coast Guard—

“(i) the estimated life-cycle costs of which exceed \$1,000,000,000; or

“(ii) the estimated total acquisition costs of which exceed \$300,000,000; or

“(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

“(i) due to—

“(I) the experimental or technically immature nature of the asset;

“(II) the technological complexity of the asset;

“(III) the commitment of resources; or

“(IV) the nature of the capability or set of capabilities to be achieved; or

“(i) because such acquisition is a joint acquisition.

“(6) LEVEL 2 ACQUISITION.—The term ‘Level 2 acquisition’ means an acquisition by the Coast Guard—

“(A) the estimated life-cycle costs of which are equal to or less than \$1,000,000,000, but greater than \$300,000,000; or

“(B) the estimated total acquisition costs of which are equal to or less than \$300,000,000, but greater than \$100,000,000.

“(7) LIFE-CYCLE COST.—The term ‘life-cycle cost’ means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

“(8) SAFETY CONCERN.—The term ‘safety concern’ means any hazard associated with a capability or asset or a subsystem of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or subsystem or any hazard associated with the capability, asset, or subsystem that is likely to cause major damage to the capability, asset, or subsystem during the course of its normal operation by a typical Coast Guard user.”

(b) CONFORMING AMENDMENT.—The part analysis for part I of title 14, United States Code, is amended by inserting after the item relating to chapter 13 the following:

“15. Acquisitions561”.

SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-THROUGH CHARGES.

(a) COMPTROLLER GENERAL REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall issue a report on pass-through charges on contracts, subcontracts, delivery orders, and task orders that were executed by a lead systems integrator under contract to the Coast Guard during the 3 full calendar years preceding the date of enactment of this Act.

(2) MATTERS COVERED.—The report under this subsection—

(A) shall assess the extent to which the Coast Guard paid excessive pass-through charges to contractors or subcontractors that provided little or no value to the performance of a contract or the production of a procured asset; and

(B) shall assess the extent to which the Coast Guard has been particularly vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors.

(b) GUIDANCE REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commandant shall prescribe guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are executed with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

(A) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

(B) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

(C) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(2) SCOPE OF GUIDANCE.—The guidance prescribed under this subsection—

(A) shall not apply to any firm, fixed-price contract or subcontract, delivery order, or task order that is—

(i) awarded on the basis of adequate price competition, as determined by the Commandant; or

(ii) for the acquisition of a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

(B) may include such additional exceptions as the Commandant determines to be necessary in the interest of the United States.

(c) **EXCESSIVE PASS-THROUGH CHARGE DEFINED.**—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower-tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower-tier contractors and subcontracts and overhead and profit based on such direct costs.

(d) **APPLICATION OF GUIDANCE.**—The guidance prescribed under this section shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of this Act.

TITLE VI—SHIPPING AND NAVIGATION

SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.

(a) **IN GENERAL.**—Chapter 313 of title 46, United States Code, is amended—

(1) by striking “of Transportation” in sections 31302, 31306, 31321, 31330, and 31343 each place it appears;

(2) by striking “and” after the semicolon in section 31301(5)(F);

(3) by striking “office.” in section 31301(6) and inserting “office; and”; and

(4) by adding at the end of section 31301 the following:

“(7) ‘Secretary’ means the Secretary of the Department of Homeland Security, unless otherwise noted.”.

(b) **SECRETARY AS MORTGAGEE.**—Section 31308 of such title is amended by striking “When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary” and inserting “The Secretary of Commerce or Transportation, as a mortgagee under this chapter.”.

(c) **SECRETARY OF TRANSPORTATION.**—Section 31329(d) of such title is amended by striking “Secretary.” and inserting “Secretary of Transportation.”.

(d) **MORTGAGEE.**—

(1) Section 31330(a)(1) of such title, as amended by subsection (a)(1) of this section, is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “Secretary; or” in subparagraph (C) and inserting “Secretary.”; and

(C) by striking subparagraph (D).

(2) Section 31330(a)(2) is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “faith; or” in subparagraph (C) and inserting “faith.”; and

(C) by striking subparagraph (D).

SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—Chapter 701 of title 46, United States Code, is amended by adding at the end the following:

“§ 70122. Regulations

“Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.”.

(b) **CLERICAL AMENDMENT.**—The table of contents for chapter 701 of such title is amended by adding at the end the following new item:

“70122. Regulations.”.

SEC. 603. COAST GUARD TO MAINTAIN LORAN-C NAVIGATION SYSTEM.

(a) **IN GENERAL.**—The Secretary of Transportation shall maintain the LORAN-C navigation system until such time as the Secretary is authorized by statute, explicitly referencing this section, to cease operating the system but expedite modernization projects necessary for transition to eLORAN technology.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Transportation, in addition to funds authorized under section 101 of this Act for the Coast Guard for operation of the LORAN-C system and for the transition to eLORAN, for capital expenses related to the LORAN-C infrastructure and to modernize and upgrade the LORAN infrastructure to provide eLORAN services, \$37,000,000 for each of fiscal years 2010 and 2011. The Secretary of Transportation may transfer from the Federal Aviation Administration and other agencies of the Department of Transportation such funds as may be necessary to reimburse the Coast Guard for related expenses.

(c) **REPORT ON TRANSITION TO eLORAN TECHNOLOGY.**—No later than 6 months after the date of enactment of this Act, the Secretary of Transportation, in cooperation with the Secretary of the Department in which the Coast Guard is operating, shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed 5-year plan for transition to eLORAN technology that includes—

(1) the timetable, milestones, projects, and future funding required to complete the transition from LORAN-C to eLORAN technology for provision of positioning, navigation, and timing services; and

(2) the benefits of eLORAN for national transportation safety, security, and economic growth.

SEC. 604. ICEBREAKERS.

(a) **ANALYSES.**—Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, which ever occurs later, the Commandant of the Coast Guard shall—

(1) conduct a comparative cost-benefit analysis of—

(A) rebuilding, renovating, or improving the existing fleet of polar icebreakers for operation by the Coast Guard,

(B) constructing new polar icebreakers for operation by the Coast Guard for operation by the Coast Guard, and

(C) any combination of the activities described in subparagraphs (A) and (B),

to carry out the missions of the Coast Guard; and

(2) conduct an analysis of the impact on mission capacity and the ability of the United States to maintain a presence in the polar regions through the year 2020 if recapitalization of the polar icebreaker fleet, either by constructing new polar icebreakers or rebuilding, renovating, or improving the existing fleet of polar icebreakers, is not fully funded.

(b) **REPORTS TO CONGRESS.**—

(1) Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, which ever occurs later, the Commandant of the Coast Guard shall submit a report containing the results of the study, together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House

of Representatives Committee on Transportation and Infrastructure.

(2) Not later than 1 year after the date of enactment of this Act, the Commandant shall submit reports containing the results of the analyses required under paragraphs (1) and (2) of subsection (a), together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 605. VESSEL SIZE LIMITS.

(a) **LENGTH, TONNAGE, AND HORSEPOWER.**—Section 12113(d)(2) of title 46, United States Code, is amended—

(1) by inserting “and” after the semicolon at the end of subparagraph (A)(i);

(2) by striking “and” at the end of subparagraph (A)(ii);

(3) by striking subparagraph (A)(iii);

(4) by striking the period at the end of subparagraph (B) and inserting “; or”; and

(5) by inserting at the end the following:

“(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-627) and is eligible for a fishery endorsement under this section.”.

(b) **CONFORMING AMENDMENTS.**—

(1) **VESSEL REBUILDING AND REPLACEMENT.**—Section 208(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-627) is amended to read as follows:

“(g) **VESSEL REBUILDING AND REPLACEMENT.**—

“(1) **IN GENERAL.**—

“(A) **REBUILD OR REPLACE.**—Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e) (other than paragraph (2)), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

“(B) **SAME REQUIREMENTS.**—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

“(C) **TRANSFER OF PERMITS AND LICENSES.**—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) shall be transferred to the rebuilt or replacement vessel.

“(2) **RECOMMENDATIONS OF NORTH PACIFIC COUNCIL.**—The North Pacific Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

“(3) **SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.**—

“(A) **IN GENERAL.**—Notwithstanding the requirements of subsections (b)(2), (c)(1), and

(c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), (d), or (e) (other than paragraph (21)) and that qualifies to be documented with a fishery endorsement pursuant to section 203(g) or 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 203(g) or 213(g) before the replacement vessel is documented with a fishery endorsement under section 12113 of title 46, United States Code.

“(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 203(g) or 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.

“(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—

“(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any regional fishery management council (other than the North Pacific Council) established under section 302(a) of the Magnuson-Stevens Act.

“(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—

“(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or

“(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

“(5) LIMITATION ON FISHERY ENDORSEMENTS.—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

“(6) GULF OF ALASKA LIMITATION.—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

“(7) AUTHORITY OF PACIFIC COUNCIL.—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery) and participants in such fisheries from adverse impacts caused by this Act.”

(2) EXEMPTION OF CERTAIN VESSELS.—Section 203(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-620) is amended—

(A) by inserting “and” after “(United States official number 651041)”;

(B) by striking “, NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act)”;

(C) by striking “, in the case of the NORTHERN” and all that follows through “PHOENIX.”

(3) FISHERY COOPERATIVE EXIT PROVISIONS.—Section 210(b) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-629) is amended—

(A) by moving the matter beginning with “the Secretary shall” in paragraph (1) 2 ems to the right; and

(B) by adding at the end the following:

“(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

“(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

“(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2008; and

“(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

“(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.

“(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

“(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

“(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.”

TITLE VII—VESSEL CONVEYANCE

SEC. 701. SHORT TITLE.

This title may be cited as the “Vessel Conveyance Act”.

SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR PUBLIC PURPOSES.

(a) IN GENERAL.—Whenever the transfer of ownership of a Coast Guard vessel to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes is authorized by law, the Coast Guard shall transfer the vessel to the General Services Administration for conveyance to the eligible entity.

(b) CONDITIONS OF CONVEYANCE.—The General Services Administration may not convey a vessel to an eligible entity as authorized by law unless the eligible entity agrees—

(1) to provide the documentation needed by the General Services Administration to process a request for aircraft or vessels under

section 102.37.225 of title 41, Code of Federal Regulations;

(2) to comply with the special terms, conditions, and restrictions imposed on aircraft and vessels under section 102-37.460 of such title;

(3) to make the vessel available to the United States Government if it is needed for use by the Commandant of the Coast Guard in time of war or a national emergency; and

(4) to hold the United States Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls, after conveyance of the vessel, except for claims arising from use of the vessel by the United States Government under paragraph (3).

(c) ELIGIBLE ENTITY DEFINED.—In this section, the term “eligible entity” means a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 1195. A bill to require the Secretary of Agriculture to carry out the Philadelphia universal feeding pilot program until the last day of the 2012-2013 school year of the School District of Philadelphia; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SPECTER. Mr. President, I rise today to speak on the Department of Agriculture's decision to end the Philadelphia School District's Universal Feeding Pilot Program and to introduce legislation extending the program. While changes to the Philadelphia program may be necessary, the appropriate time to consider these changes is during congressional reauthorization of the Child Nutrition Act. Senator CASEY and I are seeking to extend the program through the 2012-13 school year. This extension is necessary to ensure that thousands of children in Philadelphia's poorest schools are not deprived of the nutritional assistance they have relied on for over 17 years.

Recognizing the value of proper nutrition to successful learning, Congress, in 1946, passed the Richard B. Russell National School Lunch Act. This act provides the authority for the School Lunch Program, as well as several other child nutrition initiatives. In 1966 Congress expanded on its commitment to child nutrition by passing the Child Nutrition Act, which authorized the School Breakfast Program. These programs have continued to evolve through changing times and changing technologies to ensure that the goal of providing nutrition assistance to our Nation's school children is met.

In 1991 the Department of Agriculture worked with the Philadelphia School District to develop a more streamlined method of reimbursing the School District for meals served under the National School Breakfast and School Lunch Program, and ensuring all eligible students receive free meals.

This new method eliminated paper applications for free school meals, and replaced them with a socioeconomic survey based method of determining reimbursement rates and eligibility.

Paper applications are costly, and parents too often fail to return them. The socioeconomic survey based approach was chosen because it reduced administrative overhead costs and is thought to better ensure that all eligible students are accounted for. In addition, by providing Universal Service the stigma associated with receiving a free or reduced price school meal is eliminated. Indeed, during the first year of the Universal Feeding Pilot Program, the Philadelphia School District saw a 14 percent increase in lunch participation in elementary schools, a 45 percent increase in middle schools and a 180 percent increase in high schools. The Philadelphia Universal Feeding Pilot Program has successfully increased student participation in the school meal program. Should this program be ended, as the Department of Agriculture would have it, children in the Philadelphia School District will have their ability to learn undermined by Washington, DC, bureaucrats.

The students and parents in 200 of Philadelphia's poorest schools have not filled out paper applications for free and reduced priced school meals in over seventeen years. It is almost certain that some parents will fail to return paper applications to the school district, resulting in the underreporting of eligible students. In fact, the Secretary of Agriculture tacitly acknowledges the ineffectiveness of paper applications by offering outreach assistance to the Philadelphia School District.

A decrease in the amount of students claiming free or reduced lunches will lower the Department of Agriculture's reimbursement rate to the Philadelphia School District. Reducing the school meal reimbursement rate will not only cause the Philadelphia School District budgetary problems in relation to the school meals program, but because other grant funding is often based on the percentage of low income students in a district, as determined by participation rates in the school meal program, the District could potentially lose millions of dollars in other state and Federal grant funding. Federal E-rate funding, for example, which is used for educational technology, is based directly on school meal program eligibility percentages.

Congress is expected to take up the Child Nutrition Act reauthorization later this year. Universal Feeding and the National School Breakfast and Lunch Program will be a part of this debate, and this is an appropriate time and place to consider changes to the program. We know from experience that Congressional action is not always as swift as planned, and that the legislative calendar changes from week to week if not from day to day.

Therefore, Senator CASEY and I introduce legislation today to extend the

Philadelphia School District's Universal Feeding Pilot Program through the close of the 2012-2013 school year to ensure that Philadelphia school children receive the necessary nutritional assistance until Congress can enact a new policy.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 168—COMMENDING THE UNIVERSITY OF WASHINGTON WOMEN'S SOFTBALL TEAM FOR WINNING THE 2009 NCAA WOMEN'S COLLEGE WORLD SERIES

Mrs. MURRAY (for herself and Ms. CANTWELL) submitted the following resolution; which was considered and agreed to:

S. RES. 168

Whereas on June 2, 2009, for the first time in university history, the University of Washington Women Huskies won the National Collegiate Athletic Association ("NCAA") national softball championship game with a 3-2 victory over the University of Florida Gators;

Whereas University of Washington pitcher Danielle Lawrie was named the Women's College World Series Most Valuable Player and the USA Softball National Collegiate Player of the Year;

Whereas the Huskies finished the 2009 season with an impressive record of 51-12;

Whereas the members of the 2009 University of Washington softball team are excellent representatives of a university that is 1 of the premier academic institutions in Washington State, producing many outstanding student-athletes and other leaders; and

Whereas the members of the women's softball team have brought great honor to themselves, their families, the University of Washington, and the State of Washington: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the University of Washington softball team for winning the 2009 Women's College World Series;

(2) recognizes the achievements of the players, coaches, students, and staff whose hard work and dedication helped the University of Washington win the championship; and

(3) respectfully requests the Secretary of the Senate to transmit an enrolled copy of this resolution to—

(A) Mark A. Emmert, president of the University of Washington;

(B) Scott Woodward, director of athletics of the University of Washington; and

(C) Heather Tarr, head coach of the University of Washington softball team.

SENATE RESOLUTION 169—EXPRESSING THE SENSE OF THE SENATE THAT THE GOVERNMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA SHOULD WORK WITHIN THE FRAMEWORK OF THE UNITED NATIONS PROCESS WITH GREECE TO ACHIEVE LONGSTANDING UNITED STATES AND UNITED NATIONS POLICY GOALS OF FINDING A MUTUALLY ACCEPTABLE COMPOSITE NAME, WITH A GEOGRAPHICAL QUALIFIER AND FOR ALL INTERNATIONAL USES FOR THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Mr. MENENDEZ (for himself, Ms. SNOWE, Mrs. SHAHEEN, and Ms. MIKULSKI) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 169

Whereas, on April 8, 1993, the United Nations General Assembly admitted as a member the former Yugoslav Republic of Macedonia, under the name the "former Yugoslav Republic of Macedonia";

Whereas United Nations Security Council Resolution 817 (1993) states that the international dispute over the name must be resolved to maintain peaceful relations between Greece and the former Yugoslav Republic of Macedonia and regional stability;

Whereas Greece is a strategic partner and ally of the United States in bringing political stability and economic development to the Balkan region, having invested over \$20,000,000,000 in the countries of the region, thereby creating over 200,000 new jobs, and having contributed over \$750,000,000 in development aid for the region;

Whereas Greece has invested over \$1,000,000,000 in the former Yugoslav Republic of Macedonia, thereby creating more than 10,000 new jobs and having contributed \$110,000,000 in development aid;

Whereas Senate Resolution 300, introduced in the 110th Congress, urged the former Yugoslav Republic of Macedonia to abstain from hostile activities and stop the utilization of materials that violate provisions of the United Nations-brokered Interim Agreement between the former Yugoslav Republic of Macedonia and Greece regarding "hostile activities or propaganda";

Whereas NATO's Heads of State and Government unanimously agreed in Bucharest on April 3, 2008, that "... within the framework of the UN, many actors have worked hard to resolve the name issue, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore we agreed that an invitation to the former Yugoslav Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue has been reached. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible";

Whereas the Heads of State and Government participating in the meeting of the North Atlantic Council in Strasbourg/Kehl on April 4, 2009, reiterated their unanimous support for the agreement at the Bucharest Summit "to extend an invitation to the former Yugoslav Republic of Macedonia as soon as a mutually acceptable solution to the name issue has been reached within the framework of the UN, and urge intensified efforts towards that goal."; and

Whereas authorities in the former Yugoslav Republic of Macedonia urged their citizens to boycott Greek investments in the

country and not to travel to Greece: Now, therefore, be it

Resolved, That the Senate—

(1) urges the Government of the former Yugoslav Republic of Macedonia to work within the framework of the United Nations process with Greece to achieve longstanding United States and United Nations policy goals by finding a mutually acceptable composite name, with a geographical qualifier and for all international uses for the former Yugoslav Republic of Macedonia; and

(2) urges the Government of the former Yugoslav Republic of Macedonia to abstain from hostile activities and stop violating provisions of the United Nations-brokered Interim Agreement between the former Yugoslav Republic of Macedonia and Greece regarding “hostile activities or propaganda”.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1257. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table.

SA 1258. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1259. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1260. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1261. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1262. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1263. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1264. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1265. Mr. ALEXANDER (for himself, Mr. VITTER, Mr. CORNYN, Mr. ISAKSON, and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1266. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1267. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1268. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1269. Mr. BAYH (for himself, Ms. MURKOWSKI, Mr. BURRIS, Mr. LIEBERMAN, Mr.

WARNER, Mr. WEBB, Mr. NELSON, of Nebraska, and Mr. BEGICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1270. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1271. Mr. KOHL (for himself, Ms. SNOWE, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1272. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1273. Mr. WEBB submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1257. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . INCREASED CONTRIBUTIONS FROM USERS OF TOBACCO PRODUCTS UNDER FEDERAL EMPLOYEES HEALTH BENEFITS PLANS.

(a) IN GENERAL.—Section 8906 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by inserting “of this subsection and subsection (j)” after “and (4)”; and

(2) in subsection (c), by striking “subsection (b)” and inserting “subsections (b) and (j)”; and

(3) by adding at the end the following:

“(j)(1) In this subsection—

“(A) the term ‘enrollee’ means an employee or annuitant enrolled in a health benefits plan under this chapter;

“(B) the term ‘tobacco product’ means—

“(i) any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

“(ii) shall not include an article that is a drug under subsection (g)(1) of section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), a device under subsection (h) of that section, or a combination product described in section 503(g) of that Act; and

“(C) the term ‘user of a tobacco product’ means an individual who has used a tobacco product within the last 12 months.

“(2)(A) If an enrollee (or any individual covered by that enrollee if enrollment is for self and family) is a user of a tobacco product, the contribution paid by that enrollee shall be increased by 35 percent.

“(B) If an enrollee (and any individual covered by that enrollee if enrollment is for self and family) is not a user of a tobacco product, the contribution paid by that enrollee shall be reduced by 15 percent.

“(3) The Government contribution paid for each enrollee, as applicable, shall be—

“(A) reduced by the dollar amount of the increase adjusted under paragraph (2)(A); or

“(B) increased by the dollar amount of the reduction adjusted under paragraph (2)(B).

“(4) Any adjustment under this subsection shall be subject to the limitation under subsection (b)(2).”

(b) REGULATIONS.—The Office of Personnel Management shall prescribe regulations to carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to contracts entered into under section 8902 of title 5, United States Code, that take effect with respect to calendar years that begin more than 1 year after that date.

SA 1258. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in division A, insert the following:

SEC. ____ . ADJUSTMENT OF THE AMOUNT OF THE MEDICARE PART B PREMIUM TO REDWARD BENEFICIARIES WHO REFRAIN FROM TOBACCO USE.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2), by striking “and (i)” and inserting “(i), and (j)”; and

(2) by adding at the end the following new subsection:

“(j)(1) With respect to the monthly premium amount under this section for months after December 2010, the Secretary shall adjust (under procedures established by the Secretary) the amount of such premium for an individual based on whether or not the individual refrains from tobacco use. Such procedures shall include providing an individual whose premium was increased under the preceding sentence for a year with the opportunity to have the amount of such increase for the year refunded in whole or in part if the individual demonstrates to the Secretary that the individual now refrains from tobacco use.

“(2) In making the adjustments under paragraph (1) for a month, the Secretary shall ensure that the total amount of premiums to be paid under this part for the month is equal to the total amount of premiums that would have been paid under this part for the month if no such adjustments had been made, as estimated by the Secretary.”

SA 1259. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ RESTRICTIONS ON TARP EXPENDITURES FOR AUTOMOBILE MANUFACTURERS; FIDUCIARY DUTY TO TAXPAYERS; REQUIRED ISSUANCE OF COMMON STOCK TO TAXPAYERS.

(a) **PROHIBITION ON FURTHER TARP FUNDS.**—Notwithstanding any provision of the Emergency Economic Stabilization Act of 2008 (Public Law 110-434), or any other provision of law, the Secretary may not expend or obligate any funds made available under that Act on or after the date of enactment of this Act with respect to any designated automobile manufacturer.

(b) **FIDUCIARY DUTY TO SHAREHOLDERS.**—With respect to any designated automobile manufacturer, the Secretary, and the designee of the Secretary who is responsible for the exercise of shareholder voting rights with respect to a designated automobile manufacturer pursuant to assistance provided under the Emergency Economic Stabilization Act of 2008, shall have a fiduciary duty to the American taxpayer for the maximization of the return on the investment of the taxpayer under that Act, in the same manner, and to the same extent that any director of an issuer of securities has with respect to its shareholders under the securities laws and all applicable provisions of State law.

(c) **CIVIL ACTIONS AUTHORIZED.**—A person who is aggrieved of a violation of the fiduciary duty established under subsection (b) may bring a civil action in an appropriate United States district court to obtain injunctive or other equitable relief relating to the violation.

(d) **DEFINITIONS.**—As used in this section—

(1) the term “designated automobile manufacturer” means an entity organized under the laws of a State, the primary business of which is the manufacture of automobiles, and any affiliate thereof, if such automobile manufacturer—

(A) has received funds under the Emergency Economic Stabilization Act of 2008 (Public Law 110-434), or funds were obligated under that Act, before the date of enactment of this Act; and

(B) has filed for bankruptcy protection under chapter 11 of title 11, United States Code, during the 90-day period preceding the date of enactment of this Act;

(2) the term “Secretary” means the Secretary of the Treasury or the designee of the Secretary; and

(3) the terms “director”, “issuer”, “securities”, and “securities laws” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

SA 1260. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—TOBACCO PHASE OUT

SEC. ____01. ESTABLISHMENT OF TOBACCO PHASE OUT PROGRAM.

Chapter IX of the Federal Food, Drug, and Cosmetic Act (as added by section 101 and amended by section 301) is further amended by adding at the end the following:

“SEC. 921. ESTABLISHMENT OF TOBACCO PHASE OUT PROGRAM.

“(a) **IN GENERAL.**—The Secretary shall establish a program to require annual reductions in the sale of cigarettes.

“(b) **REQUIREMENT.**—

“(1) **IN GENERAL.**—Under the program under subsection (a), each tobacco product manufacturer shall annually certify to the Secretary that—

“(A) with respect to cigarettes made by such manufacturer, the total number of such cigarettes sold during the year for which the certification is submitted is 1 percent less than the total number of such cigarettes sold during the preceding year; or

“(B) such manufacturer has purchased an additional cigarette sales allotment from another manufacturer as provided for in subsection (c).

“(2) **INITIAL CERTIFICATION.**—With respect to the first year for which a certification is submitted by a tobacco product manufacturer, the 1 percent reduction required under paragraph (1)(A) with respect to the sale of cigarettes shall be determined using the amount of such manufacturer’s cigarettes sold in the highest sales year during the preceding 5-year period (as determined by the Secretary).

“(c) **ADDITIONAL CIGARETTE SALES ALLOTMENT.**—

“(1) **IN GENERAL.**—A tobacco product manufacturer (referred to in this subsection as the ‘contracting manufacturer’) to which this section applies may enter into a contract with one or more additional manufacturers (referred to in this subsection as a ‘decreased sales manufacturer’) to purchase from such manufacturers an additional sales allotment.

“(2) **REQUIREMENT.**—A contract entered into under paragraph (1) shall—

“(A) require the decreased sales manufacturer to provide for a further reduction in the total number of cigarettes sold during the year involved (beyond that required under subsection (b)(1)) by an amount equal to the additional sales allotment provided for in the contract; and

“(B) permit the contracting manufacturer to increase the total number of cigarettes sold during the year involved by an amount equal to the additional sales allotment provided for in the contract.

“(3) **ADDITIONAL SALES ALLOTMENT.**—In this subsection, the term ‘additional sales allotment’ means the number of cigarettes by which the decreased sales manufacturer agrees to further reduce its sales during the year involved.

“(d) **ENFORCEMENT.**—

“(1) **IN GENERAL.**—A tobacco product manufacturer that fails to comply with the requirement of subsection (b) for any year shall be subject to a penalty in an amount equal to \$2 multiplied by the number of cigarettes by which such manufacturer has failed to comply with such subsection (b). Amounts collected under this paragraph shall be used to carry out paragraph (2).

“(2) **USE OF AMOUNTS.**—

“(A) **IMPLEMENTATION COSTS.**—Amount collected under paragraph (1) shall be used to reimburse the Secretary for the costs of implementing the program under this section.

“(B) **TOBACCO USE COUNTER-ADVERTISING.**—

“(i) **ESTABLISHMENT OF CAMPAIGN.**—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall carry out a campaign of counter-advertising with respect to tobacco use. The campaign shall consist of the placement of pro-health advertisements regarding tobacco use on television, on radio, in print, on billboards, on movie trailers, on the Internet, and in other media.

“(ii) **FUNDING.**—If amounts remain available under paragraph (1) after the Secretary is fully reimbursed as provided for under subparagraph (A), such amounts shall be used to carry out the campaign under clause (i).

“(e) **PROCEDURES.**—The Secretary shall develop procedures for—

“(1) the submission and verification of certificates under subsection (a);

“(2) the administration and verification of additional cigarette sales allotment contracts under subsection (c); and

“(3) the imposition of penalties under subsection (d).”.

SA 1261. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 903(a)(2) of the Federal Food Drug, and Cosmetic Act (as added by section 101), strike subparagraph (C).

SA 1262. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 102(a) of division A, strike paragraph (2) and insert the following:

(2) **ADVERTISING IN GENERAL.**—Beginning on the date that is 1 year from date of enactment of this Act, the advertisement of tobacco products, through any form of media, shall be prohibited.

SA 1263. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees’ Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 900 of the Federal Food Drug, and Cosmetic Act (as added by section 101), strike paragraph (16) and insert the following:

“(16) **SMALL TOBACCO PRODUCT MANUFACTURER.**—The term ‘small tobacco product manufacturer’ means a tobacco product manufacturer whose share, expressed as a percentage, of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the Federal Government, and, in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority,

is less than 10 percent. For purposes of calculating the share under this paragraph, 0.09 ounces of 'roll your own' tobacco shall constitute one individual cigarette. With respect to a tobacco product manufacturer that sells tobacco products others than cigarettes and does not also sell cigarettes, the term 'small tobacco product manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees."

SA 1264. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 102(a)(2), insert after subparagraph (D) the following:

"(E) strike 'and in paragraph (b)(2) of this section' from section 897.14(b)(1), and strike section 897.14(b)(2);".

SA 1265. Mr. ALEXANDER (for himself, Mr. VITTER, Mr. CORNYN, Mr. ISAKSON, and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ RESTRICTIONS ON TARP EXPENDITURES FOR AUTOMOBILE MANUFACTURERS; FIDUCIARY DUTY TO TAXPAYERS; REQUIRED ISSUANCE OF COMMON STOCK TO TAXPAYERS.

(a) **SHORT TITLE.**—This section may be cited as the "Auto Stock for Every Taxpayer Act".

(b) **PROHIBITION ON FURTHER TARP FUNDS.**—Notwithstanding any provision of the Emergency Economic Stabilization Act of 2008 (Public Law 110-434), or any other provision of law, the Secretary may not expend or obligate any funds made available under that Act on or after the date of enactment of this Act with respect to any designated automobile manufacturer.

(c) **FIDUCIARY DUTY TO SHAREHOLDERS.**—With respect to any designated automobile manufacturer, the Secretary, and the designee of the Secretary who is responsible for the exercise of shareholder voting rights with respect to a designated automobile manufacturer pursuant to assistance provided under the Emergency Economic Stabilization Act of 2008, shall have a fiduciary duty to the American taxpayer for the maximization of the return on the investment of the taxpayer under that Act, in the same manner, and to the same extent that any director of an issuer of securities has with respect to its shareholders under the securities laws and all applicable provisions of State law.

(d) **REQUIRED ISSUANCE OF COMMON STOCK TO ELIGIBLE TAXPAYERS.**—Not later than 1

year after the emergence of any designated automobile manufacturer from bankruptcy protection described in subsection (f)(1)(B), the Secretary shall issue a certificate of common stock to each eligible taxpayer, which shall represent such taxpayer's share of the aggregate common stock holdings of the United States Government in the designated automobile manufacturer on such date.

(e) **CIVIL ACTIONS AUTHORIZED.**—A person who is aggrieved of a violation of the fiduciary duty established under subsection (c) may bring a civil action in an appropriate United States district court to obtain injunctive or other equitable relief relating to the violation.

(f) **DEFINITIONS.**—As used in this section—

(1) the term "designated automobile manufacturer" means an entity organized under the laws of a State, the primary business of which is the manufacture of automobiles, and any affiliate thereof, if such automobile manufacturer—

(A) has received funds under the Emergency Economic Stabilization Act of 2008 (Public Law 110-434), or funds were obligated under that Act, before the date of enactment of this Act; and

(B) has filed for bankruptcy protection under chapter 11 of title 11, United States Code, during the 90-day period preceding the date of enactment of this Act;

(2) the term "eligible taxpayer" means any individual taxpayer who filed a Federal taxable return for taxable year 2008 (including any joint return) not later than the due date for such return (including any extension);

(3) the term "Secretary" means the Secretary of the Treasury or the designee of the Secretary; and

(4) the terms "director", "issuer", "securities", and "securities laws" have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

SA 1266. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ HEALTHY BEHAVIOR INCENTIVE PROGRAMS.

(a) **MEDICAID STATE PLAN AMENDMENT.**—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)—

(A) in paragraph (72), by striking "and" at the end;

(B) in paragraph (73), by striking the period at the end and inserting "and"; and

(C) by inserting after paragraph (73), the following new paragraph:

"(74) provide that, not later than October 1, 2011, the State shall provide assurances to the Secretary that the State has in effect a program described in subsection (gg) to reward and encourage individuals determined to be eligible for medical assistance under the plan to reduce or eliminate their use of tobacco products."; and

(2) by adding at the end the following new subsection:

"(gg)(1) For purposes of subsection (a)(74), a program described in this subsection is a program under which the State—

"(A) provides incentives to reward individuals determined to be eligible for medical assistance under the State plan who agree to participate in the program and successfully refrain from tobacco use;

"(B) notwithstanding any other provision of this title, may elect with respect to individuals determined to be eligible for medical assistance under the State plan who have attained age 19 but not attained age 65, to condition the individual's enrollment in the State plan on participating in the program;

"(C) notwithstanding any other provision of this title, may elect to vary the amount, duration, or scope of the medical assistance provided under the State plan, or to impose cost-sharing without regard to sections 1916 or 1916A, in such manner as the State determines is likely to be effective in reducing the use of tobacco products by individuals eligible for medical assistance under the State plan; and

"(D) agrees to provide the Secretary with such information as the Secretary requires for purposes of producing the State rankings required under paragraph (2).

"(2) Not later than December 31, 2012, the Secretary shall rank the States with respect to their efforts to reduce the use of tobacco products among individuals who have been determined to be eligible for medical assistance under State plans under this title and among individuals who have been determined to be eligible for child health assistance or other health benefits under a State child health plan under title XXI."

(b) **APPLICATION TO THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM.**—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(1) by redesignating subparagraphs (D) through (L) as subparagraphs (E) through (M), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) Section 1902(a)(74) (relating to an incentive program for the reduction or elimination of the use of tobacco products)."

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section take effect on October 1, 2009.

(2) **EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.**—In the case of a State plan under title XIX or a State child health plan under XXI of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SA 1267. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service

Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 907 of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)(3) of title I of division A), add the following:

“(f) PESTICIDES.—Nothing in this section affects the authority of the Administrator of the Environmental Protection Agency to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).”

SA 1268. Mr. CHAMBLISS (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of chapter IX of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)(3) of title I of division A), add the following:

“SEC. 920. PESTICIDES.

“Nothing in this chapter affects the authority of the Administrator of the Environmental Protection Agency to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).”

SA 1269. Mr. BAYH (for himself, Ms. MURKOWSKI, Mr. BURRIS, Mr. LIEBERMAN, Mr. WARNER, Mr. WEBB, Mr. NELSON of Nebraska, and Mr. BEGICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

DIVISION —NURSE FACULTY LOAN REPAYMENT PROGRAM

SEC. 1. SHORT TITLE.

This division may be cited as the “Nurses' Higher Education and Loan Repayment Act of 2009”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Health Resources and Services Administration estimates there is currently a shortage of more than 200,000 registered nurses nationwide and projects the shortage will grow to more than 1,000,000 nurses by 2020, 36 percent less than needed to meet demand for nursing care.

(2) The shortage of qualified nursing faculty is the primary factor driving the inability of nursing schools to graduate more registered nurses to meet the Nation's growing workforce demand.

(3) There continues to be strong interest on the part of young Americans to enter the nursing field. The National League for Nurs-

ing estimates that 88,000 qualified applications, or 1 out of every 3 submitted to basic registered nurse programs in 2006, were rejected due to lack of capacity.

(4) The American Association of Colleges of Nursing (in this section referred to as the “AACN”) estimates that 49,948 applicants were turned away specifically from baccalaureate and graduate schools of nursing in 2008 and over 70 percent of the schools responding to the AACN survey reported a lack of nurse faculty as the number 1 reason for turning away qualified applicants. Likewise, nearly 70 percent of the associate's degree registered nurse programs responding to the most recent American Association of Community Colleges Nursing Survey reported a lack of faculty to teach as the number 1 reason for turning away qualified applicants.

(5) Large numbers of faculty members at schools of nursing in the United States are nearing retirement. According to the AACN, the average age of a nurse faculty member is 55 years old and the average age at retirement is 62.

(6) The current nationwide nurse faculty vacancy rate is estimated to be as high as 7.6 percent, including 814 vacant positions at schools of nursing offering baccalaureate and advanced degrees and, in 2006, as many as 880 in associate's degree programs.

(7) Market forces have created disincentives for individuals qualified to become nurse educators from pursuing this career. The average annual salary for an associate professor of nursing with a master's degree is nearly 20 percent less than the average salary for a nurse practitioner with a master's degree, according to the 2007 salary survey by the journal ADVANCE for Nurse Practitioners.

(8) The most recent Health Resources and Services Administration survey data indicates that from a total of more than 2,000,000 registered nurses, only 143,113 registered nurses with a bachelor's degree and only 51,318 registered nurses with an associate's degree have continued their education to earn a master's degree in the science of nursing, the minimum credential necessary to teach in all types of registered nurse programs. The majority of these graduates do not become nurse educators.

(9) Current Federal incentive programs to encourage nurses to become educators are inadequate and inaccessible for many interested nurses.

(10) A broad incentive program must be available to willing and qualified nurses that will provide financial support and encourage them to pursue and maintain a career in nursing education.

SEC. 3. NURSE FACULTY LOAN REPAYMENT PROGRAM.

Part E of title VIII of the Public Health Service Act (42 U.S.C. 297a et seq.) is amended by inserting after section 846A the following new section:

“SEC. 846B. NURSE FACULTY LOAN REPAYMENT PROGRAM.

“(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with eligible individuals for the repayment of education loans, in accordance with this section, to increase the number of qualified nursing faculty.

“(b) AGREEMENTS.—Each agreement entered into under subsection (a) shall require that the eligible individual shall serve as a full-time member of the faculty of an accredited school of nursing for a total period, in the aggregate, of at least 4 years during the 6-year period beginning on the later of—

“(1) the date on which the individual receives a master's or doctorate nursing degree from an accredited school of nursing; or

“(2) the date on which the individual enters into an agreement under subsection (a).

“(c) AGREEMENT PROVISIONS.—Agreements entered into pursuant to subsection (a) shall be entered into on such terms and conditions as the Secretary may determine, except that—

“(1) not more than 300 days after the date on which the 6-year period described under subsection (b) begins, but in no case before the individual starts as a full-time member of the faculty of an accredited school of nursing, the Secretary shall begin making payments, for and on behalf of that individual, on the outstanding principal of, and interest on, any loan the individual obtained to pay for such degree;

“(2) for an individual who has completed a master's degree in nursing—

“(A) payments may not exceed \$10,000 per calendar year; and

“(B) total payments may not exceed \$40,000; and

“(3) for an individual who has completed a doctorate degree in nursing—

“(A) payments may not exceed \$20,000 per calendar year; and

“(B) total payments may not exceed \$80,000.

“(d) BREACH OF AGREEMENT.—

“(1) IN GENERAL.—In the case of any agreement made under subsection (a), the individual is liable to the Federal Government for the total amount paid by the Secretary under such agreement, and for interest on such amount at the maximum legal prevailing rate, if the individual fails to meet the agreement terms required under subsection (b).

“(2) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such paragraph if compliance by the individual with the agreement involved is impossible or would involve extreme hardship to the individual or if enforcement of the agreement with respect to the individual would be unconscionable.

“(3) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

“(4) AVAILABILITY.—Amounts recovered under paragraph (1) shall be available to the Secretary for making loan repayments under this section and shall remain available for such purpose until expended.

“(e) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term ‘eligible individual’ means an individual who—

“(1) is a United States citizen, national, or lawful permanent resident;

“(2) holds an unencumbered license as a registered nurse; and

“(3) has either already completed a master's or doctorate nursing program at an accredited school of nursing or is currently enrolled on a full-time or part-time basis in such a program.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2010 through 2014 to carry out this Act. Such sums shall remain available until expended.

“(g) SUNSET.—The provisions of this section shall terminate on December 31, 2020.”

SA 1270. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain

authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ REIMBURSEMENT OF AUTOMOBILE DISTRIBUTORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, any funds provided by the United States Government, or any agency, department, or subdivision thereof, to an automobile manufacturer or a distributor thereof as credit, loans, financing, advances, or by any other agreement in connection with such automobile manufacturer's or distributor's proceeding as a debtor under title 11, United States Code, shall be conditioned upon use of such funds to fully reimburse all dealers of such automobile manufacturer or manufacturer's distributor for—

(1) the cost incurred by such dealers in acquisition of all parts and inventory in the dealer's possession as of the date on which the proceeding under title 11, United States Code, by or against the automobile manufacturer or manufacturer's distributor is commenced, on the same basis as if the dealers were terminating pursuant to existing franchise agreements or dealer agreements; and

(2) all other obligations owed by such automobile manufacturer or manufacturer's distributor under any other agreement between the dealers and the automobile manufacturer or manufacturer's distributor, including, without limitation, franchise agreement or dealer agreements.

(b) INCLUSION IN TERMS.—Any note, security agreement, loan agreement, or other agreement between an automobile manufacturer or manufacturer's distributor and the Government (or any agency, department, or subdivision thereof) shall expressly provide for the use of such funds as required by this section. A bankruptcy court may not authorize the automobile manufacturer or manufacturer's distributor to obtain credit under section 364 of title 11, United States Code, unless the credit agreement or agreements expressly provided for the use of funds as required by this section.

(c) EFFECTIVENESS OF REJECTION.—Notwithstanding any other provision of law, any rejection by an automobile manufacturer or manufacturer's distributor that is a debtor in a proceeding under title 11, United States Code, of a franchise agreement or dealer agreement pursuant to section 365 of that title, shall not be effective until at least 180 days after the date on which such rejection is otherwise approved by a bankruptcy court.

SA 1271. Mr. KOHL (for himself, Ms. SNOWE, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division A, add the following:

TITLE ____—PREVENT ALL CIGARETTE TRAFFICKING ACT

SEC. ____ 01. SHORT TITLE; PURPOSES.

(a) SHORT TITLE.—This title may be cited as the "Prevent All Cigarette Trafficking Act of 2009" or "PACT Act".

(b) PURPOSES.—It is the purpose of this title to—

(1) require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers;

(2) create strong disincentives to illegal smuggling of tobacco products;

(3) provide government enforcement officials with more effective enforcement tools to combat tobacco smuggling;

(4) make it more difficult for cigarette and smokeless tobacco traffickers to engage in and profit from their illegal activities;

(5) increase collections of Federal, State, and local excise taxes on cigarettes and smokeless tobacco; and

(6) prevent and reduce youth access to inexpensive cigarettes and smokeless tobacco through illegal Internet or contraband sales.

SEC. ____ 02. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—The Act of October 19, 1949 (15 U.S.C. 375 et seq.; commonly referred to as the "Jenkins Act") (referred to in this title as the "Jenkins Act"), is amended by striking the first section and inserting the following:

"SECTION 1. DEFINITIONS; RULE OF CONSTRUCTION.

"(a) DEFINITIONS.—As used in this Act, the following definitions apply:

"(1) ATTORNEY GENERAL.—The term 'attorney general', with respect to a State, means the attorney general or other chief law enforcement officer of the State.

"(2) CIGARETTE.—

"(A) IN GENERAL.—The term 'cigarette'—

"(i) has the meaning given that term in section 2341 of title 18, United States Code; and

"(ii) includes roll-your-own tobacco (as defined in section 5702 of the Internal Revenue Code of 1986).

"(B) EXCEPTION.—The term 'cigarette' does not include a cigar (as defined in section 5702 of the Internal Revenue Code of 1986).

"(3) COMMON CARRIER.—The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the United States.

"(4) CONSUMER.—The term 'consumer'—

"(A) means any person that purchases cigarettes or smokeless tobacco; and

"(B) does not include any person lawfully operating as a manufacturer, distributor, wholesaler, or retailer of cigarettes or smokeless tobacco.

"(5) DELIVERY SALE.—The term 'delivery sale' means any sale of cigarettes or smokeless tobacco to a consumer if—

"(A) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

"(B) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

"(6) DELIVERY SELLER.—The term 'delivery seller' means a person who makes a delivery sale.

"(7) INDIAN COUNTRY.—The term 'Indian country'—

"(A) has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

"(B) includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

"(8) INDIAN TRIBE.—The term 'Indian tribe', 'tribe', or 'tribal' refers to an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

"(9) INTERSTATE COMMERCE.—The term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.

"(10) PERSON.—The term 'person' means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

"(11) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"(12) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

"(13) TOBACCO TAX ADMINISTRATOR.—The term 'tobacco tax administrator' means the State, local, or tribal official duly authorized to collect the tobacco tax or administer the tax law of a State, locality, or tribe, respectively.

"(14) USE.—The term 'use' includes the consumption, storage, handling, or disposal of cigarettes or smokeless tobacco.

"(b) RULE OF CONSTRUCTION.—For purposes of this Act, a sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined herein, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered."

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is amended—

(1) by striking "cigarettes" each place it appears and inserting "cigarettes or smokeless tobacco";

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting "CONTENTS.—" after "(a)";

(ii) by striking "or transfers" and inserting "transfers, or ships";

(iii) by inserting "locality, or Indian country of an Indian tribe" after "a State";

(iv) by striking "to other than a distributor licensed by or located in such State,"; and

(v) by striking "or transfer and shipment" and inserting "transfer, or shipment";

(B) in paragraph (1)—

(i) by striking "with the tobacco tax administrator of the State" and inserting "with the Attorney General of the United States and with the tobacco tax administrators of the State and place"; and

(ii) by striking "and" and inserting the following: "as well as telephone numbers

for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;”;

(C) in paragraph (2), by striking “and the quantity thereof,” and inserting “the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and”;

(D) by adding at the end the following:

“(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of the memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian tribes operating within the borders of the State that apply their own local or tribal taxes on cigarettes or smokeless tobacco.”;

(3) in subsection (b)—

(A) by inserting “PRESUMPTIVE EVIDENCE,—” after “(b)”;

(B) by striking “(1) that” and inserting “that”;

(C) by striking “, and (2)” and all that follows and inserting a period; and

(4) by adding at the end the following:

“(c) USE OF INFORMATION.—A tobacco tax administrator or chief law enforcement officer who receives a memorandum or invoice under paragraph (2) or (3) of subsection (a) shall use the memorandum or invoice solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco, and shall keep confidential any personal information in the memorandum or invoice except as required for such purposes.”.

(c) REQUIREMENTS FOR DELIVERY SALES.—The Jenkins Act is amended by inserting after section 2 the following:

“SEC. 2A. DELIVERY SALES.

“(a) IN GENERAL.—With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

“(1) the shipping requirements set forth in subsection (b);

“(2) the recordkeeping requirements set forth in subsection (c);

“(3) all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including laws imposing—

“(A) excise taxes;

“(B) licensing and tax-stamping requirements;

“(C) restrictions on sales to minors; and

“(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

“(4) the tax collection requirements set forth in subsection (d).

“(b) SHIPPING AND PACKAGING.—

“(1) REQUIRED STATEMENT.—For any shipping package containing cigarettes or smokeless tobacco, the delivery seller shall include on the bill of lading, if any, and on the outside of the shipping package, on the same surface as the delivery address, a clear and conspicuous statement providing as follows: ‘CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS’.

“(2) FAILURE TO LABEL.—Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as nondeliverable

matter by a common carrier or other delivery service, if the common carrier or other delivery service knows or should know the package contains cigarettes or smokeless tobacco. If a common carrier or other delivery service believes a package is being submitted for delivery in violation of paragraph (1), it may require the person submitting the package for delivery to establish that it is not being sent in violation of paragraph (1) before accepting the package for delivery. Nothing in this paragraph shall require the common carrier or other delivery service to open any package to determine its contents.

“(3) WEIGHT RESTRICTION.—A delivery seller shall not sell, offer for sale, deliver, or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.

“(4) AGE VERIFICATION.—

“(A) IN GENERAL.—A delivery seller who mails or ships tobacco products—

“(i) shall not sell, deliver, or cause to be delivered any tobacco products to a person under the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery;

“(ii) shall use a method of mailing or shipping that requires—

“(I) the purchaser placing the delivery sale order, or an adult who is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery, to sign to accept delivery of the shipping container at the delivery address; and

“(II) the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery; and

“(iii) shall not accept a delivery sale order from a person without—

“(I) obtaining the full name, birth date, and residential address of that person; and

“(II) verifying the information provided in subclause (I), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by the applicable law at the place of delivery.

“(B) LIMITATION.—No database being used for age and identity verification under subparagraph (A)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.

“(c) RECORDS.—

“(1) IN GENERAL.—Each delivery seller shall keep a record of any delivery sale, including all of the information described in section 2(a)(2), organized by the State, and within the State, by the city or town and by zip code, into which the delivery sale is so made.

“(2) RECORD RETENTION.—Records of a delivery sale shall be kept as described in paragraph (1) until the end of the 4th full calendar year that begins after the date of the delivery sale.

“(3) ACCESS FOR OFFICIALS.—Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian tribes that apply local or tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement

officers of the local governments and Indian tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

“(d) DELIVERY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no delivery seller may sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco pursuant to a delivery sale unless, in advance of the sale, delivery, or tender—

“(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

“(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarettes or smokeless tobacco are to be delivered has been paid to the local government; and

“(C) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

“(2) EXCEPTION.—Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

“(e) LIST OF UNREGISTERED OR NONCOMPLIANT DELIVERY SELLERS.—

“(1) IN GENERAL.—

“(A) INITIAL LIST.—Not later than 90 days after this subsection goes into effect under the Prevent All Cigarette Trafficking Act of 2009, the Attorney General of the United States shall compile a list of delivery sellers of cigarettes or smokeless tobacco that have not registered with the Attorney General of the United States pursuant to section 2(a), or that are otherwise not in compliance with this Act, and—

“(i) distribute the list to—

“(I) the attorney general and tax administrator of every State;

“(II) common carriers and other persons that deliver small packages to consumers in interstate commerce, including the United States Postal Service; and

“(III) any other person that the Attorney General of the United States determines can promote the effective enforcement of this Act; and

“(ii) publicize and make the list available to any other person engaged in the business of interstate deliveries or who delivers cigarettes or smokeless tobacco in or into any State.

“(B) LIST CONTENTS.—To the extent known, the Attorney General of the United States shall include, for each delivery seller on the list described in subparagraph (A)—

“(i) all names the delivery seller uses or has used in the transaction of its business or on packages delivered to customers;

“(ii) all addresses from which the delivery seller does or has done business, or ships or has shipped cigarettes or smokeless tobacco;

“(iii) the website addresses, primary e-mail address, and phone number of the delivery seller; and

“(iv) any other information that the Attorney General of the United States determines would facilitate compliance with this subsection by recipients of the list.

“(C) UPDATING.—The Attorney General of the United States shall update and distribute the list described in subparagraph (A) at least once every 4 months, and may distribute the list and any updates by regular

mail, electronic mail, or any other reasonable means, or by providing recipients with access to the list through a nonpublic website that the Attorney General of the United States regularly updates.

“(D) STATE, LOCAL, OR TRIBAL ADDITIONS.—The Attorney General of the United States shall include in the list described in subparagraph (A) any noncomplying delivery sellers identified by any State, local, or tribal government under paragraph (6), and shall distribute the list to the attorney general or chief law enforcement official and the tax administrator of any government submitting any such information, and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (6).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—In preparing and revising the list described in subparagraph (A), the Attorney General of the United States shall—

“(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that a delivery seller is not in compliance with this Act;

“(ii) not later than 14 days before including a delivery seller on the list, make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list, which shall cite the relevant provisions of this Act and the specific reasons for which the delivery seller is being placed on the list;

“(iii) provide an opportunity to the delivery seller to challenge placement on the list;

“(iv) investigate each challenge described in clause (iii) by contacting the relevant Federal, State, tribal, and local law enforcement officials, and provide the specific findings and results of the investigation to the delivery seller not later than 30 days after the date on which the challenge is made; and

“(v) if the Attorney General of the United States determines that the basis for including a delivery seller on the list is inaccurate, based on incomplete information, or cannot be verified, promptly remove the delivery seller from the list as appropriate and notify each appropriate Federal, State, tribal, and local authority of the determination.

“(F) CONFIDENTIALITY.—The list described in subparagraph (A) shall be confidential, and any person receiving the list shall maintain the confidentiality of the list and may deliver the list, for enforcement purposes, to any government official or to any common carrier or other person that delivers tobacco products or small packages to consumers. Nothing in this section shall prohibit a common carrier, the United States Postal Service, or any other person receiving the list from discussing with a listed delivery seller the inclusion of the delivery seller on the list and the resulting effects on any services requested by the listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list described in paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

“(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) the package being delivered weighs more than 100 pounds and the person making the delivery does not know or have reasonable cause to believe that the package contains cigarettes or smokeless tobacco.

“(B) IMPLEMENTATION OF UPDATES.—Commencing on the date that is 30 days after the date of the distribution or availability of any updates or corrections to the list described in paragraph (1)(A), all recipients and all common carriers or other persons that deliver cigarettes or smokeless tobacco to consumers shall be subject to subparagraph (A) in regard to the corrections or updates.

“(3) EXEMPTIONS.—

“(A) IN GENERAL.—Subsection (b)(2) and any requirements or restrictions placed directly on common carriers under this subsection, including subparagraphs (A) and (B) of paragraph (2), shall not apply to a common carrier that—

“(i) is subject to a settlement agreement described in subparagraph (B); or

“(ii) if a settlement agreement described in subparagraph (B) to which the common carrier is a party is terminated or otherwise becomes inactive, is administering and enforcing policies and practices throughout the United States that are at least as stringent as any such agreement.

“(B) SETTLEMENT AGREEMENT.—A settlement agreement described in this subparagraph—

“(i) is a settlement agreement relating to tobacco product deliveries to consumers; and

“(ii) includes—

“(I) the Assurance of Discontinuance entered into by the Attorney General of New York and DHL Holdings USA, Inc. and DHL Express (USA), Inc. on or about July 1, 2005, the Assurance of Discontinuance entered into by the Attorney General of New York and United Parcel Service, Inc. on or about October 21, 2005, and the Assurance of Compliance entered into by the Attorney General of New York and Federal Express Corporation and FedEx Ground Package Systems, Inc. on or about February 3, 2006, if each of those agreements is honored throughout the United States to block illegal deliveries of cigarettes or smokeless tobacco to consumers; and

“(II) any other active agreement between a common carrier and a State that operates throughout the United States to ensure that no deliveries of cigarettes or smokeless tobacco shall be made to consumers or illegally operating Internet or mail-order sellers and that any such deliveries to consumers shall not be made to minors or without payment to the States and localities where the consumers are located of all taxes on the tobacco products.

“(4) SHIPMENTS FROM PERSONS ON LIST.—

“(A) IN GENERAL.—If a common carrier or other delivery service delays or interrupts the delivery of a package in the possession of the common carrier or delivery service because the common carrier or delivery service determines or has reason to believe that the person ordering the delivery is on a list described in paragraph (1)(A) and that clauses (i), (ii), and (iii) of paragraph (2)(A) do not apply—

“(i) the person ordering the delivery shall be obligated to pay—

“(I) the common carrier or other delivery service as if the delivery of the package had been timely completed; and

“(II) if the package is not deliverable, any reasonable additional fee or charge levied by the common carrier or other delivery service to cover any extra costs and inconvenience and to serve as a disincentive against such noncomplying delivery orders; and

“(ii) if the package is determined not to be deliverable, the common carrier or other delivery service shall offer to provide the pack-

age and its contents to a Federal, State, or local law enforcement agency.

“(B) RECORDS.—A common carrier or other delivery service shall maintain, for a period of 5 years, any records kept in the ordinary course of business relating to any delivery interrupted under this paragraph and provide that information, upon request, to the Attorney General of the United States or to the attorney general or chief law enforcement official or tax administrator of any State, local, or tribal government.

“(C) CONFIDENTIALITY.—Any person receiving records under subparagraph (B) shall—

“(i) use the records solely for the purposes of the enforcement of this Act and the collection of any taxes owed on related sales of cigarettes and smokeless tobacco; and

“(ii) keep confidential any personal information in the records not otherwise required for such purposes.

“(5) PREEMPTION.—

“(A) IN GENERAL.—No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery;

“(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery;

“(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid;

“(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or

“(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.

“(B) RELATIONSHIP TO OTHER LAWS.—Except as provided in subparagraph (C), nothing in this paragraph shall be construed to nullify, expand, restrict, or otherwise amend or modify—

“(i) section 14501(c)(1) or 47173(b)(4) of title 49, United States Code;

“(ii) any other restrictions in Federal law on the ability of State, local, or tribal governments to regulate common carriers; or

“(iii) any provision of State, local, or tribal law regulating common carriers that is described in section 14501(c)(2) or 47173(b)(4)(B) of title 49 of the United States Code.

“(C) STATE LAWS PROHIBITING DELIVERY SALES.—

“(i) IN GENERAL.—Except as provided in clause (ii), nothing in the Prevent All Cigarette Trafficking Act of 2009, the amendments made by that Act, or in any other Federal statute shall be construed to preempt, supersede, or otherwise limit or restrict State laws prohibiting the delivery sale, or the shipment or delivery pursuant to a delivery sale, of cigarettes or other tobacco products to individual consumers or personal residences.

“(ii) EXEMPTIONS.—No State may enforce against a common carrier a law prohibiting the delivery of cigarettes or other tobacco products to individual consumers or personal residences without proof that the common carrier is not exempt under paragraph (3) of this subsection.

“(6) STATE, LOCAL, AND TRIBAL ADDITIONS.—

“(A) IN GENERAL.—Any State, local, or tribal government shall provide the Attorney General of the United States with—

“(i) all known names, addresses, website addresses, and other primary contact information of any delivery seller that—

“(I) offers for sale or makes sales of cigarettes or smokeless tobacco in or into the State, locality, or tribal land; and

“(II) has failed to register with or make reports to the respective tax administrator as required by this Act, or that has been found in a legal proceeding to have otherwise failed to comply with this Act; and

“(ii) a list of common carriers and other persons who make deliveries of cigarettes or smokeless tobacco in or into the State, locality, or tribal land.

“(B) UPDATES.—Any government providing a list to the Attorney General of the United States under subparagraph (A) shall also provide updates and corrections every 4 months until such time as the government notifies the Attorney General of the United States in writing that the government no longer desires to submit information to supplement the list described in paragraph (1)(A).

“(C) REMOVAL AFTER WITHDRAWAL.—Upon receiving written notice that a government no longer desires to submit information under subparagraph (A), the Attorney General of the United States shall remove from the list described in paragraph (1)(A) any persons that are on the list solely because of the prior submissions of the government of the list of the government of noncomplying delivery sellers of cigarettes or smokeless tobacco or a subsequent update or correction by the government.

“(7) DEADLINE TO INCORPORATE ADDITIONS.—The Attorney General of the United States shall—

“(A) include any delivery seller identified and submitted by a State, local, or tribal government under paragraph (6) in any list or update that is distributed or made available under paragraph (1) on or after the date that is 30 days after the date on which the information is received by the Attorney General of the United States; and

“(B) distribute any list or update described in subparagraph (A) to any common carrier or other person who makes deliveries of cigarettes or smokeless tobacco that has been identified and submitted by a government pursuant to paragraph (6).

“(8) NOTICE TO DELIVERY SELLERS.—Not later than 14 days before including any delivery seller on the initial list described in paragraph (1)(A), or on an update to the list for the first time, the Attorney General of the United States shall make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on the list or update, with that notice citing the relevant provisions of this Act.

“(9) LIMITATIONS.—

“(A) IN GENERAL.—Any common carrier or other person making a delivery subject to this subsection shall not be required or otherwise obligated to—

“(i) determine whether any list distributed or made available under paragraph (1) is complete, accurate, or up-to-date;

“(ii) determine whether a person ordering a delivery is in compliance with this Act; or

“(iii) open or inspect, pursuant to this Act, any package being delivered to determine its contents.

“(B) ALTERNATE NAMES.—Any common carrier or other person making a delivery subject to this subsection—

“(i) shall not be required to make any inquiries or otherwise determine whether a person ordering a delivery is a delivery seller on the list described in paragraph (1)(A) who is using a different name or address in order to evade the related delivery restrictions; and

“(ii) shall not knowingly deliver any packages to consumers for any delivery seller on the list described in paragraph (1)(A) who the common carrier or other delivery service knows is a delivery seller who is on the list and is using a different name or address to evade the delivery restrictions of paragraph (2).

“(C) PENALTIES.—Any common carrier or person in the business of delivering packages on behalf of other persons shall not be subject to any penalty under section 14101(a) of title 49, United States Code, or any other provision of law for—

“(i) not making any specific delivery, or any deliveries at all, on behalf of any person on the list described in paragraph (1)(A);

“(ii) refusing, as a matter of regular practice and procedure, to make any deliveries, or any deliveries in certain States, of any cigarettes or smokeless tobacco for any person or for any person not in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

“(iii) delaying or not making a delivery for any person because of reasonable efforts to comply with this Act.

“(D) OTHER LIMITS.—Section 2 and subsections (a), (b), (c), and (d) of this section shall not be interpreted to impose any responsibilities, requirements, or liability on common carriers.

“(f) PRESUMPTION.—For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.”

(d) PENALTIES.—The Jenkins Act is amended by striking section 3 and inserting the following:

“SEC. 3. PENALTIES.

“(a) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), whoever knowingly violates this Act shall be imprisoned for not more than 3 years, fined under title 18, United States Code, or both.

“(2) EXCEPTIONS.—

“(A) GOVERNMENTS.—Paragraph (1) shall not apply to a State, local, or tribal government.

“(B) DELIVERY VIOLATIONS.—A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed knowingly—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(b) CIVIL PENALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (3), whoever violates this Act shall be subject to a civil penalty in an amount not to exceed—

“(A) in the case of a delivery seller, the greater of—

“(i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or

“(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless to-

bacco of the delivery seller during the 1-year period ending on the date of the violation.

“(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

“(2) RELATION TO OTHER PENALTIES.—A civil penalty imposed under paragraph (1) for a violation of this Act shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

“(3) EXCEPTIONS.—

“(A) DELIVERY VIOLATIONS.—An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) only if the violation is committed intentionally—

“(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

“(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 2A.

“(B) OTHER LIMITATIONS.—No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 2A(e) if—

“(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

“(ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).”

(e) ENFORCEMENT.—The Jenkins Act is amended by striking section 4 and inserting the following:

“SEC. 4. ENFORCEMENT.

“(a) IN GENERAL.—The United States district courts shall have jurisdiction to prevent and restrain violations of this Act and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

“(b) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General of the United States shall administer and enforce this Act.

“(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

“(1) IN GENERAL.—

“(A) STANDING.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this Act by any person or to obtain any other appropriate relief from any person for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

“(B) SOVEREIGN IMMUNITY.—Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under this Act, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(2) PROVISION OF INFORMATION.—A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 2A(a)(3), through its chief

law enforcement officer, may provide evidence of a violation of this Act by any person not subject to State, local, or tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this Act.

“(3) USE OF PENALTIES COLLECTED.—

“(A) IN GENERAL.—There is established a separate account in the Treasury known as the ‘PACT Anti-Trafficking Fund’. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this Act shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this Act and other laws relating to contraband tobacco products.

“(B) ALLOCATION OF FUNDS.—Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

“(4) NONEXCLUSIVITY OF REMEDY.—

“(A) IN GENERAL.—The remedies available under this section and section 3 are in addition to any other remedies available under Federal, State, local, tribal, or other law.

“(B) STATE COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(C) TRIBAL COURT PROCEEDINGS.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

“(D) LOCAL GOVERNMENT ENFORCEMENT.—Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

“(d) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this Act by any person other than a State, local, or tribal government.

“(e) NOTICE.—

“(1) PERSONS DEALING IN TOBACCO PRODUCTS.—Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

“(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

“(f) PUBLIC NOTICE.—

“(1) IN GENERAL.—The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States,

under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

“(2) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, and every year thereafter until the date that is 5 years after such date of enactment, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).”.

SEC. 03. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NON-MAILABLE MATTER.

(a) IN GENERAL.—Chapter 83 of title 18, United States Code, is amended by inserting after section 1716D the following:

“§ 1716E. Tobacco products as nonmailable

“(a) PROHIBITION.—

“(1) IN GENERAL.—All cigarettes and smokeless tobacco (as those terms are defined in section 1 of the Act of October 19, 1949, commonly referred to as the Jenkins Act) are nonmailable and shall not be deposited in or carried through the mails. The United States Postal Service shall not accept for delivery or transmit through the mails any package that it knows or has reasonable cause to believe contains any cigarettes or smokeless tobacco made nonmailable by this paragraph.

“(2) REASONABLE CAUSE.—For the purposes of this subsection reasonable cause includes—

“(A) a statement on a publicly available website, or an advertisement, by any person that the person will mail matter which is nonmailable under this section in return for payment; or

“(B) the fact that the person is on the list created under section 2A(e) of the Jenkins Act.

“(b) EXCEPTIONS.—

“(1) CIGARS.—Subsection (a) shall not apply to cigars (as defined in section 5702(a) of the Internal Revenue Code of 1986).

“(2) GEOGRAPHIC EXCEPTION.—Subsection (a) shall not apply to mailings within the State of Alaska or within the State of Hawaii.

“(3) BUSINESS PURPOSES.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed only—

“(i) for business purposes between legally operating businesses that have all applicable State and Federal Government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research; or

“(ii) for regulatory purposes between any business described in clause (i) and an agency of the Federal Government or a State government.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized under this paragraph is a business or government agency permitted to make a mailing under this paragraph;

“(II) the United States Postal Service to ensure that any recipient of an otherwise nonmailable tobacco product sent through the mails under this paragraph is a business

or government agency that may lawfully receive the product;

“(III) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(IV) that the identity of the business or government entity submitting the mailing containing otherwise nonmailable tobacco products for delivery and the identity of the business or government entity receiving the mailing are clearly set forth on the package;

“(V) the United States Postal Service to maintain identifying information described in subclause (IV) during the 3-year period beginning on the date of the mailing and make the information available to the Postal Service, the Attorney General of the United States, and to persons eligible to bring enforcement actions under section 3(d) of the Prevent All Cigarette Trafficking Act of 2009;

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to a permitted government agency or business and may not be delivered to any residence or individual person; and

“(VII) that any mailing described in subparagraph (A) be delivered only to a verified employee of the recipient business or government agency, who is not a minor and who shall be required to sign for the mailing.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products as determined by applicable law at the place the individual is located.

“(4) CERTAIN INDIVIDUALS.—

“(A) IN GENERAL.—Subsection (a) shall not apply to tobacco products mailed by individuals who are not minors for noncommercial purposes, including the return of a damaged or unacceptable tobacco product to the manufacturer.

“(B) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting an otherwise nonmailable tobacco product into the mails as authorized under this paragraph is the individual identified on the return address label of the package and is not a minor;

“(II) for a mailing to an individual, the United States Postal Service to require the person submitting the otherwise nonmailable tobacco product into the mails as authorized by this paragraph to affirm that the recipient is not a minor;

“(III) that any package mailed under this paragraph shall weigh not more than 10 ounces;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) that a mailing described in subparagraph (A) shall not be delivered or placed in the possession of any individual who has not been verified as not being a minor;

“(VI) for a mailing described in subparagraph (A) to an individual, that the United

States Postal Service shall deliver the package only to a recipient who is verified not to be a minor at the recipient address or transfer it for delivery to an Air/Army Postal Office or Fleet Postal Office number designated in the recipient address; and

“(VII) that no person may initiate more than 10 mailings described in subparagraph (A) during any 30-day period.

“(C) DEFINITION.—In this paragraph, the term ‘minor’ means an individual who is less than the minimum age required for the legal sale or purchase of tobacco products as determined by applicable law at the place the individual is located.

“(5) EXCEPTION FOR MAILINGS FOR CONSUMER TESTING BY MANUFACTURERS.—

“(A) IN GENERAL.—Subject to subparagraph (B), subsection (a) shall not preclude a legally operating cigarette manufacturer or a legally authorized agent of a legally operating cigarette manufacturer from using the United States Postal Service to mail cigarettes to verified adult smoker solely for consumer testing purposes, if—

“(i) the cigarette manufacturer has a permit, in good standing, issued under section 5713 of the Internal Revenue Code of 1986;

“(ii) the package of cigarettes mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes);

“(iii) the recipient does not receive more than 1 package of cigarettes from any 1 cigarette manufacturer under this paragraph during any 30-day period;

“(iv) all taxes on the cigarettes mailed under this paragraph levied by the State and locality of delivery are paid to the State and locality before delivery, and tax stamps or other tax-payment indicia are affixed to the cigarettes as required by law; and

“(v) the recipient has not made any payments of any kind in exchange for receiving the cigarettes;

“(II) the recipient is paid a fee by the manufacturer or agent of the manufacturer for participation in consumer product tests; and

“(III) the recipient, in connection with the tests, evaluates the cigarettes and provides feedback to the manufacturer or agent.

“(B) LIMITATIONS.—Subparagraph (A) shall not—

“(i) permit a mailing of cigarettes to an individual located in any State that prohibits the delivery or shipment of cigarettes to individuals in the State, or preempt, limit, or otherwise affect any related State laws; or

“(ii) permit a manufacturer, directly or through a legally authorized agent, to mail cigarettes in any calendar year in a total amount greater than 1 percent of the total cigarette sales of the manufacturer in the United States during the calendar year before the date of the mailing.

“(C) RULES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Prevent All Cigarette Trafficking Act of 2009, the Postmaster General shall issue a final rule which shall establish the standards and requirements that apply to all mailings described in subparagraph (A).

“(ii) CONTENTS.—The final rule issued under clause (i) shall require—

“(I) the United States Postal Service to verify that any person submitting a tobacco product into the mails under this paragraph is a legally operating cigarette manufacturer permitted to make a mailing under this paragraph, or an agent legally authorized by the legally operating cigarette manufacturer to submit the tobacco product into the mails on behalf of the manufacturer;

“(II) the legally operating cigarette manufacturer submitting the cigarettes into the mails under this paragraph to affirm that—

“(aa) the manufacturer or the legally authorized agent of the manufacturer has

verified that the recipient is an adult established smoker;

“(bb) the recipient has not made any payment for the cigarettes;

“(cc) the recipient has signed a written statement that is in effect indicating that the recipient wishes to receive the mailings; and

“(dd) the manufacturer or the legally authorized agent of the manufacturer has offered the opportunity for the recipient to withdraw the written statement described in item (cc) not less frequently than once in every 3-month period;

“(III) the legally operating cigarette manufacturer or the legally authorized agent of the manufacturer submitting the cigarettes into the mails under this paragraph to affirm that any package mailed under this paragraph contains not more than 12 packs of cigarettes (240 cigarettes) on which all taxes levied on the cigarettes by the State and locality of delivery have been paid and all related State tax stamps or other tax-payment indicia have been applied;

“(IV) that any mailing described in subparagraph (A) shall be sent through the systems of the United States Postal Service that provide for the tracking and confirmation of the delivery;

“(V) the United States Postal Service to maintain records relating to a mailing described in subparagraph (A) during the 3-year period beginning on the date of the mailing and make the information available to persons enforcing this section;

“(VI) that any mailing described in subparagraph (A) be marked with a United States Postal Service label or marking that makes it clear to employees of the United States Postal Service that it is a permitted mailing of otherwise nonmailable tobacco products that may be delivered only to the named recipient after verifying that the recipient is an adult; and

“(VII) the United States Postal Service shall deliver a mailing described in subparagraph (A) only to the named recipient and only after verifying that the recipient is an adult.

“(D) DEFINITIONS.—In this paragraph—

“(i) the term ‘adult’ means an individual who is not less than 21 years of age; and

“(ii) the term ‘consumer testing’ means testing limited to formal data collection and analysis for the specific purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

“(6) FEDERAL GOVERNMENT AGENCIES.—An agency of the Federal Government involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes under the same requirements, restrictions, and rules and procedures that apply to consumer testing mailings of cigarettes by manufacturers under paragraph (5), except that the agency shall not be required to pay the recipients for participating in the consumer testing.

“(c) SEIZURE AND FORFEITURE.—Any cigarettes or smokeless tobacco made nonmailable by this subsection that are deposited in the mails shall be subject to seizure and forfeiture, pursuant to the procedures set forth in chapter 46 of this title. Any tobacco products seized and forfeited under this subsection shall be destroyed or retained by the Federal Government for the detection or prosecution of crimes or related investigations and then destroyed.

“(d) ADDITIONAL PENALTIES.—In addition to any other fines and penalties under this title for violations of this section, any person violating this section shall be subject to an additional civil penalty in the amount equal to 10 times the retail value of the non-

mailable cigarettes or smokeless tobacco, including all Federal, State, and local taxes.

“(e) CRIMINAL PENALTY.—Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything that is nonmailable matter under this section shall be fined under this title, imprisoned not more than 1 year, or both.

“(f) USE OF PENALTIES.—There is established a separate account in the Treasury, to be known as the ‘PACT Postal Service Fund’. Notwithstanding any other provision of law, an amount equal to 50 percent of any criminal fines, civil penalties, or other monetary penalties collected by the Federal Government in enforcing this section shall be transferred into the PACT Postal Service Fund and shall be available to the Postmaster General for the purpose of enforcing this subsection.

“(g) COORDINATION OF EFFORTS.—The Postmaster General shall cooperate and coordinate efforts to enforce this section with related enforcement activities of any other Federal agency or agency of any State, local, or tribal government, whenever appropriate.

“(h) ACTIONS BY STATE, LOCAL, OR TRIBAL GOVERNMENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

“(1) IN GENERAL.—A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may in a civil action in a United States district court obtain appropriate relief with respect to a violation of this section. Appropriate relief includes injunctive and equitable relief and damages equal to the amount of unpaid taxes on tobacco products mailed in violation of this section to addressees in that State, locality, or tribal land.

“(2) SOVEREIGN IMMUNITY.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unauthorized lawsuit under paragraph (1), or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

“(3) ATTORNEY GENERAL REFERRAL.—A State, through its attorney general, or a local government or Indian tribe that levies an excise tax on tobacco products, through its chief law enforcement officer, may provide evidence of a violation of this section for commercial purposes by any person not subject to State, local, or tribal government enforcement actions for violations of this section to the Attorney General of the United States, who shall take appropriate actions to enforce this section.

“(4) NONEXCLUSIVITY OF REMEDIES.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, tribal, or other law. Nothing in this subsection shall be construed to expand, restrict, or otherwise modify any right of an authorized State, local, or tribal government official to proceed in a State, tribal, or other appropriate court, or take other enforcement actions, on the basis of an alleged violation of State, local, tribal, or other law.

“(5) OTHER ENFORCEMENT ACTIONS.—Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of the State.

“(i) DEFINITION.—In this section, the term ‘State’ has the meaning given that term in section 1716(k).”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 83 of title 18 is amended

by inserting after the item relating to section 1716D the following:

“1716E. Tobacco products as nonmailable.”.

SEC. 04. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS; CIVIL PENALTY.

Section 2343(c) of title 18, United States Code, is amended to read as follows:

“(C)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

“(A) any records or information required to be maintained by the person under this chapter; or

“(B) any cigarettes or smokeless tobacco kept or stored by the person at the premises.

“(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1).

“(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.”.

SEC. 05. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title shall be construed to amend, modify, or otherwise affect—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian country;

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian country;

(3) any limitations under Federal or State law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian tribes, tribal members, tribal enterprises, or in Indian country;

(4) any Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any tribe, tribal members, tribal enterprises, tribal reservations, or other lands held by the United States in trust for one or more Indian tribes; or

(5) any State or local government authority to bring enforcement actions against persons located in Indian country.

(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this title or the amendments made by this title shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Nothing in this title or the

amendments made by this title shall be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this title or the amendments made by this title shall prohibit, limit, or restrict enforcement by the Attorney General of the United States of this title or an amendment made by this title within Indian country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application and any other provision of this title shall be resolved in favor of this section.

(f) DEFINITIONS.—In this section—

(1) the term “Indian country” has the meaning given that term in section 1 of the Jenkins Act, as amended by this title; and

(2) the term “tribal enterprise” means any business enterprise, regardless of whether incorporated or unincorporated under Federal or tribal law, of an Indian tribe or group of Indian tribes.

SEC. 06. ENHANCED CONTRABAND TOBACCO ENFORCEMENT.

(a) REQUIREMENTS.—The Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall—

(1) not later than the end of the 3-year period beginning on the effective date of this title, create a regional contraband tobacco trafficking team in each of New York, New York, the District of Columbia, Detroit, Michigan, Los Angeles, California, Seattle, Washington, and Miami, Florida;

(2) create a Tobacco Intelligence Center to oversee investigations and monitor and coordinate ongoing investigations and to serve as the coordinator for all ongoing tobacco diversion investigations within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, in the United States and, where applicable, with law enforcement organizations around the world;

(3) establish a covert national warehouse for undercover operations; and

(4) create a computer database that will track and analyze information from retail sellers of tobacco products that sell through the Internet or by mail order or make other non-face-to-face sales.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a) \$8,500,000 for each of fiscal years 2010 through 2014.

SEC. 07. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall take effect on the date that is 90 days after the date of enactment of this Act.

(b) BATFE AUTHORITY.—The amendments made by section 04 of this title shall take effect on the date of enactment of this Act.

SEC. 08. SEVERABILITY.

If any provision of this title, or any amendment made by this title, or the application thereof to any person or circumstance, is held invalid, the remainder of the title and the application of the title to any other person or circumstance shall not be affected thereby.

SEC. 09. SENSE OF CONGRESS CONCERNING THE PRECEDENTIAL EFFECT OF THIS TITLE.

It is the sense of Congress that unique harms are associated with online cigarette sales, including problems with verifying the ages of consumers in the digital market and the long-term health problems associated with the use of certain tobacco products. This title was enacted recognizing the longstanding interest of Congress in urging compliance with States' laws regulating remote sales of certain tobacco products to citizens of those States, including the passage of the Jenkins Act over 50 years ago, which estab-

lished reporting requirements for out-of-State companies that sell certain tobacco products to citizens of the taxing States, and which gave authority to the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the Jenkins Act. In light of the unique harms and circumstances surrounding the online sale of certain tobacco products, this title is intended to help collect cigarette excise taxes, to stop tobacco sales to underage youth, and to help the States enforce their laws that target the online sales of certain tobacco products only. This title is in no way meant to create a precedent regarding the collection of State sales or use taxes by, or the validity of efforts to impose other types of taxes on, out-of-State entities that do not have a physical presence within the taxing State.

SA 1272. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. LABELING CHANGES.

Section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) is amended by adding at the end the following:

“(10) If the proposed labeling of a drug that is the subject of an application under this subsection is different from the labeling of the listed drug at the time of approval of the application under this subsection, the drug that is the subject of such application shall, notwithstanding any other provision of this Act, be eligible for approval and shall not be considered misbranded under section 502 if—

“(A) a revision to the labeling of the listed drug has been approved by the Secretary within 60 days of the expiration of the patent or exclusivity period that otherwise prohibited the approval of the drug under this subsection;

“(B) the Secretary has not determined the applicable text of the labeling for the drug that is the subject the application under this subsection at the time of expiration of such patent or exclusivity period;

“(C) the labeling revision described under subparagraph (A) does not include a change to the ‘Warnings’ section of the labeling;

“(D) the Secretary does not deem that the absence of such revision to the labeling of the drug that is the subject of the application under this subsection would adversely impact the safe use of the drug;

“(E) the sponsor of the application under this subsection agrees to revise the labeling of the drug that is the subject of such application not later than 60 days after the notification of any changes to such labeling required by the Secretary; and

“(F) such application otherwise meets the applicable requirements for approval under this subsection.”.

SA 1273. Mr. WEBB submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code,

to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE — AUTOMOBILE VOUCHER PROGRAM

SEC. 01. AUTOMOBILE VOUCHER PROGRAM.

(a) **ESTABLISHMENT.**—There is established in the National Highway Traffic Safety Administration a voluntary program to be known as the "Automobile Voucher Program" through which the Secretary, in accordance with this section and the regulations promulgated under subsection (d), shall—

(1) authorize the issuance of an electronic voucher, subject to the specifications set forth in subsection (c), to offset the purchase price or lease price for a qualifying lease of an automobile manufactured after model year 2006, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program;

(2) certify dealers for participation in the Program to accept vouchers as provided in this section as partial payment or down payment for the purchase or qualifying lease of an automobile manufactured after model year 2006, offered for sale or lease by that dealer; and

(3) in consultation with the Secretary of the Treasury, make electronic payments to dealers for vouchers accepted by such dealers, in accordance with the regulations promulgated under subsection (d);

(4) in consultation with the Secretary of the Treasury, provide for the payment of rebates to persons who qualify for a rebate under subsection (c)(2); and

(5) in consultation with the Secretary of the Treasury and the Inspector General of the Department of Transportation, establish and provide for the enforcement of measures to prevent and penalize fraud under the Program.

(b) **QUALIFICATIONS FOR AND VALUE OF VOUCHERS.**—

(1) **NEW AUTOMOBILES.**—A \$4,000 voucher shall be issued under the Program to offset the purchase price or lease price of a new automobile, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program.

(2) **USED AUTOMOBILES.**—A \$3,000 voucher shall be issued under the Program to offset the purchase price or lease price of a used automobile manufactured after model year 2006, upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program.

(c) **PROGRAM SPECIFICATIONS.**—

(1) **LIMITATIONS.**—

(A) **GENERAL PERIOD OF ELIGIBILITY.**—A voucher issued under the Program shall be used only for the purchase or qualifying lease of automobiles manufactured after model year 2006 that occur between—

(i) March 30, 2009; and

(ii) the date that is 1 year after the date on which the regulations promulgated under subsection (d) are implemented.

(B) **NUMBER OF VOUCHERS PER PERSON AND PER TRADE-IN VEHICLE.**—Not more than 1 voucher may be issued for a single person and not more than 1 voucher may be issued for the joint registered owners of a single eligible trade-in vehicle.

(C) **NO COMBINATION OF VOUCHERS.**—Only 1 voucher issued under the Program may be applied toward the purchase or qualifying lease of an automobile manufactured after model year 2006.

(D) **COMBINATION WITH OTHER INCENTIVES PERMITTED.**—The availability or use of a Federal, State, or local incentive or a State-issued voucher for the purchase or lease of an automobile manufactured after model year 2006 shall not limit the value or issuance of a voucher under the Program to any person otherwise eligible to receive such a voucher.

(E) **NO ADDITIONAL FEES.**—A dealer participating in the program may not charge a person purchasing or leasing an automobile manufactured after model year 2006 any additional fees associated with the use of a voucher under the Program.

(F) **NUMBER AND AMOUNT.**—The total number and value of vouchers issued under the Program may not exceed the amounts appropriated for such purpose.

(2) **ELIGIBLE PURCHASES OR LEASES PRIOR TO DATE OF ENACTMENT.**—If a person purchased or leased a new automobile during the period beginning on March 30, 2009 and ending on the day before the date of the enactment of this Act, the person shall be eligible for a cash rebate equivalent to the amount described in subsection (b)(1) if the person provides proof satisfactory to the Secretary that the person is eligible for such rebate.

(d) **RULEMAKING.**—Notwithstanding the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of this Act. Such regulations shall—

(1) provide for a means of certifying dealers for participation in the Program;

(2) establish procedures for the reimbursement of dealers participating in the Program to be made through electronic transfer of funds for both the amount of the vouchers and any reasonable administrative costs incurred by the dealer as soon as practicable but no longer than 10 days after the submission of a voucher for the automobile manufactured after model year 2006 to the Secretary;

(3) allow the dealer to use the voucher in addition to any other rebate or discount offered by the dealer or the manufacturer for the automobile manufactured after model year 2006 and prohibit the dealer from using the voucher to offset any such other rebate or discount;

(4) establish a process by which persons who qualify for a rebate under subsection (c)(2) may apply for such rebate; and

(5) provide for the enforcement of the penalties described in subsection (e).

(e) **ANTI-FRAUD PROVISIONS.**—

(1) **VIOLATION.**—It shall be unlawful for any person to knowingly violate any provision under this section or any regulations issued pursuant to subsection (d).

(2) **PENALTIES.**—Any person who commits a violation described in paragraph (1) shall be liable to the United States Government for a civil penalty of not more than \$15,000 for each violation.

(f) **INFORMATION TO CONSUMERS AND DEALERS.**—

(1) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, and promptly upon the update of any relevant information, the Secretary shall make available on an Internet Web site and through other means determined by the Secretary information about the Program, including—

(A) how to determine if a vehicle is an eligible trade-in vehicle; and

(B) how to participate in the Program, including how to determine participating dealers.

(2) **PUBLIC AWARENESS CAMPAIGN.**—The Secretary shall conduct a public awareness cam-

paign to inform consumers about the Program and sources of additional information.

(g) **RECORDKEEPING AND REPORT.**—

(1) **DATABASE.**—The Secretary shall maintain a database of the vehicle identification numbers of all automobile manufactured after model year 2006, which have been purchased or leased under the Program.

(2) **REPORT.**—Not later than 60 days after the termination date described in subsection (c)(1)(A)(ii), the Secretary shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the efficacy of the Program, including—

(A) a description of Program results, including—

(i) the total number and amount of vouchers issued for purchase or lease of automobiles manufactured after model year 2006 by manufacturer (including aggregate information concerning the make, model, model year) and category of automobile;

(ii) aggregate information regarding the make, model, model year, and manufacturing location of vehicles traded in under the Program; and

(iii) the location of sale or lease; and

(B) an estimate of the overall economic and employment effects of the Program.

(h) **EXCLUSION OF VOUCHERS AND REBATES FROM INCOME.**—

(1) **FEDERAL PROGRAMS.**—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be regarded as income and shall not be regarded as a resource for the month of receipt of the voucher or rebate and the following 12 months, for purposes of determining the eligibility of the recipient of the voucher or rebate (or the recipient's spouse or other family or household members) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program.

(2) **TAXATION.**—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(i) **DEFINITIONS.**—As used in this section—

(1) the term "automobile" means an automobile or a work truck (as such terms are defined in section 32901(a) of title 49, United States Code);

(2) the term "dealer" means a person licensed by a State who engages in the sale of new or used automobiles to ultimate purchasers;

(3) the term "eligible trade-in vehicle" means an automobile or a work truck (as such terms are defined in section 32901(a) of title 49, United States Code) that was manufactured before model year 2005;

(4) the term "person" means an individual, partnership, corporation, business trust, or any organized group of persons;

(5) the term "Program" means the Automobile Voucher Program established under this section;

(6) the term "qualifying lease" means a lease of an automobile for a period of not less than 5 years;

(7) the term "Secretary" means the Secretary of Transportation acting through the National Highway Traffic Safety Administration; and

(8) the term "vehicle identification number" means the 17-character number used by the automobile industry to identify individual automobiles.

SEC. 02. REALLOCATION OF APPROPRIATIONS.

From the amounts appropriated under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the Director of the Office of Management and Budget may allocate not more than \$4,000,000,000 to carry out

the Automobile Voucher Program established under this title.

SEC. 03. EMERGENCY DESIGNATION.

For purposes of Senate enforcement, this title is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 403 of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting has been scheduled before the Committee on Energy and Natural Resources. The business meeting will be held on Tuesday, June 9, 2009, at 10 a.m., in room SD-366 of the Dirksen Senate office building.

The purpose of the business meeting is to consider pending energy legislation.

For further information, please contact Sam Fowler at (202) 224-7571 or Amanda Kelly at (202) 224-6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 10 a.m. in room 106 of the Dirksen Senate office building.

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

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 9:30 a.m.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 9:30 a.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a business meeting on Thursday, June 4, 2009 at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, June 4, 2009.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 4, 2009, at 10 a.m. to hold a hearing entitled "Challenges and Opportunities for U.S.-China Cooperation on Climate Change."

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, on Thursday, June 4, 2009, at 10 a.m. in room SD-226 of the Dirksen Senate office building.

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

AD HOC SUBCOMMITTEE ON DISASTER RECOVERY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on June 4, 2009 at 2:30 p.m. to conduct a hearing entitled, "Are We Ready? A Status Report on Emergency Preparedness for the 2009 Hurricane Season."

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on June 4, 2009 at 2:30 p.m.

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

PRIVILEGES OF THE FLOOR

Mr. AKAKA. Madam President, I ask unanimous consent that my fellow, Louise Kitamura, be granted the privileges of the floor for today.

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

Mr. VOINOVICH. Mr. President, I ask unanimous consent that T.J. Kim, a fellow in my office, be granted floor privileges for today.

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

Mr. SANDERS. Mr. President, I ask unanimous consent that Gail Hansen, a fellow in my office, be granted the privilege of the floor.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 168, the nomination of David Heyman to be an Assistant Secretary of Homeland Security; that the nomination be confirmed, the motion to reconsider be laid upon the table; that no further motions be in order and any statements relating thereto be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF HOMELAND SECURITY

David Heyman, of the District of Columbia, to be an Assistant Secretary of Homeland Security.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

UNANIMOUS CONSENT AGREEMENT—H.R. 1256

Mr. BROWN. I ask unanimous consent that the cloture vote on the Dodd substitute amendment occur at 5:30 p.m., Monday, June 8, and that the filing deadline for first-degree amendments be 3 p.m., Monday, and the filing deadline for second-degree amendments be 4:30 p.m., Monday.

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

UNANIMOUS CONSENT AGREEMENT—S. 1023

Mr. BROWN. I ask unanimous consent that notwithstanding the adjournment of the Senate, the Commerce Committee be authorized to report S. 1023, the Travel Promotion Act, on Friday, June 5, from 10 a.m. to noon.

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

COMMENDING THE UNIVERSITY OF WASHINGTON WOMEN'S SOFTBALL TEAM

Mr. BROWN. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 168, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 168) commending the University of Washington women's softball team for winning the 2009 NCAA Women's College World Series.

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

Ms. CANTWELL. Mr. President, I rise today to congratulate the University of Washington softball team on their 2009 NCAA National Championship.

On June 2, led by National Player of the Year Danielle Lawrie and head coach Heather Tarr, the Huskies earned their first title in a thrilling 3-2 victory over the University of Florida.

The win caps an amazing 51-12 season that saw the team capture the hearts and minds of the entire region. Facing challenges and setbacks throughout the season, the team found the courage and determination needed to break through to highest achievement in college softball.

Following the game, National Player of the Year Danielle Lawrie added to her already lengthy resume when she was selected as the Most Outstanding Player of the College World Series. She was joined on this year's First-Team All-America team by teammate Ashley Charters who closes out her Husky career with her third All-America selection.

However, it was not individuals who won this championship; it was a team. The commitment and passion of each and every player has turned the University of Washington into one of the most feared softball teams in the Nation. This season marks the 16th straight postseason appearance by the Huskies. Competing in the indisputably toughest conference in America, the Pac-10, the University of Washington has steadily climbed into the ranks of softball's elite.

At a time when budget shortfalls are forcing universities across the Nation to eliminate athletic programs, the University of Washington softball team stands as a testament to the role of athletics in our schools. These are not superstars headed to lucrative paychecks; they are committed student-athletes who dedicate themselves every day on the field and in the classroom. I reserve special praise for the league-leading seven Huskies named to the Pac-10 All-Academic team: Morgan Stuart, Amanda Fleischman, Alyson McWherter, Ashlyn Watson, Ashley Charters, Marnie Koziol and Alicia Blake.

Congratulations once more to our newest national champions, the University of Washington Huskies. Go Dawgs!

Mr. BROWN. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 168) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 168

Whereas on June 2, 2009, for the first time in university history, the University of Washington Women Huskies won the National Collegiate Athletic Association ("NCAA") national softball championship game with a 3-2 victory over the University of Florida Gators;

Whereas University of Washington pitcher Danielle Lawrie was named the Women's College World Series Most Valuable Player and the USA Softball National Collegiate Player of the Year;

Whereas the Huskies finished the 2009 season with an impressive record of 51-12;

Whereas the members of the 2009 University of Washington softball team are excellent representatives of a university that is 1 of the premier academic institutions in Washington State, producing many outstanding student-athletes and other leaders; and

Whereas the members of the women's softball team have brought great honor to themselves, their families, the University of Washington, and the State of Washington: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the University of Washington softball team for winning the 2009 Women's College World Series;

(2) recognizes the achievements of the players, coaches, students, and staff whose hard work and dedication helped the University of Washington win the championship; and

(3) respectfully requests the Secretary of the Senate to transmit an enrolled copy of this resolution to—

(A) Mark A. Emmert, president of the University of Washington;

(B) Scott Woodward, director of athletics of the University of Washington; and

(C) Heather Tarr, head coach of the University of Washington softball team.

ORDERS FOR MONDAY, JUNE 8, 2009

Mr. BROWN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. on Monday, June 8; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 5:30 p.m., with Senators permitted to speak for up to 10 minutes each; that following morning business, the Senate resume consideration of Calendar No. 47, H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, under the previous order.

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

PROGRAM

Mr. BROWN. Mr. President, as a reminder, the filing deadlines are 3 p.m. Monday for first-degree amendments and 4:30 p.m. Monday for second-degree amendments. The next vote will occur on Monday at 5:30 p.m.

ADJOURNMENT UNTIL MONDAY, JUNE 8, 2009, AT 2 P.M.

Mr. BROWN. Mr. President, if there is no further business to come before

the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:32 p.m., adjourned until Monday, June 8, 2009, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate:

FEDERAL LABOR RELATIONS AUTHORITY

JULIA AKINS CLARK, OF MARYLAND, TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS, VICE COLLEEN DUFFY KIKO, RESIGNED.

ERNEST W. DUBESTER, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS EXPIRING JULY 29, 2012, VICE DALE CABANISS, RESIGNED.

DEPARTMENT OF JUSTICE

PREET BHARARA, OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE MICHAEL J. GARCIA, RESIGNED.

TRISTRAM J. COFFIN, OF VERMONT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF VERMONT FOR THE TERM OF FOUR YEARS, VICE THOMAS D. ANDERSON, RESIGNED.

JENNY A. DURKAN, OF WASHINGTON, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS, VICE JOHN MCKAY, RESIGNED.

PAUL JOSEPH FISHMAN, OF NEW JERSEY, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY FOR THE TERM OF FOUR YEARS, VICE CHRISTOPHER JAMES CHRISTIE, RESIGNED.

B. TODD JONES, OF MINNESOTA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MINNESOTA FOR THE TERM OF FOUR YEARS, VICE RACHEL K. PAULOSE, RESIGNED.

JOHN P. KACAVAS, OF NEW HAMPSHIRE, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW HAMPSHIRE FOR THE TERM OF FOUR YEARS, VICE THOMAS P. COLANTUONO, RESIGNED.

JOYCE WHITE VANCE, OF ALABAMA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF ALABAMA FOR THE TERM OF FOUR YEARS, VICE ALICE HOWZE MARTIN.

CHRISTOPHER H. SCHROEDER, OF NORTH CAROLINA, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE ELISEBETH C. COOK, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT W. CONE

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. RAYMOND E. JOHNS, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. DOUGLAS J. ROBB

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

VINCENT G. AUTH
KURT J. BROCKMAN
SCOTT A. CURTICE
RODNEY L. GUNNING
SHEHERAZAD A. HARTZELL
KURT HUMMELDORF
JESSE W. LEE, JR.
ROWLAND E. MCCOY
BRENT E. NEUBAUER
WILLIAM N. NORMAN
MICHAEL T. RONCONE
MARTHA P. VILLALOBOS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

SALVADOR AGUILERA
DAVID A. F. BRADLEY
ARTHUR M. BROWN

TIMOTHY R. EICHLER
BRYAN K. FINCH
MILTON D. GIANULIS
GUY M. LEE
STEPHEN P. PIKE
JOHN A. SWANSON
GREGORY N. TODD
DONALD P. TROAST
DENNIS W. YOUNG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

MICHAEL M. BATES
DAVID A. BERGER
TIERNEY M. CARLOS
REBECCA A. CONRAD
JOEL A. DOOLIN
ANNE B. FISCHER
HOLIDAY HANNA
DAVID M. HARRISON
MARY C. L. HARRIGAN
MICHAEL J. JAEGER
DON A. MARTIN
JAMES R. MCFARLANE
MARY S. REISMEIER
GARY E. SHARP
ERIN E. STONE
DAVID G. WILSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JOHN J. ADAMETZ
KEVIN L. BROWN
JOSEPH E. GREALISH
STEPHANIE M. JONES
MICHELLE C. LADUCA
MARKO MEDVED
PAUL J. ODENTHAL
CRAIG S. PRATHER
CHARLES R. REUNING
EDWARD G. SEWSTER
STEVEN L. SIMS
MARSHALL T. SYKES
DEAN A. TUFTS
ROBERT W. TYE
MICHAEL A. WEAVER
RICHARD L. WHIPPLE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

KRISTEN ATTERBURY
KHIN AUNGTHEIN
MARGARET S. BEAUBIEN
JUDITH D. BELLAS
MARY A. BRANTLEYMAHONY
DAVID T. CASTELLANO
JAY E. CHAMBERS
VICKI L. EDGAR
TRISHA L. FARRELL
SANDRA HEARN
JAMES T. HOSACK
LENA M. JONES
JOHN J. KANE, SR.
BARBARA J. KINCADE
LORI J. KRAYER
JOHN T. MANNING
SANDRA A. MASON
CAROLYN R. MCGEE
PAMELA M. MILLER
KATHERINE M. NATOLI
ANGELA S. NIMMO
MARIA E. PERRY
JOANNE M. PETRELLI
GORDON R. SMITH
HARRY F. SMITH III

CONSTANCE E. STAMATERIS
CYNTHIA D. TURNER
FAY B. WAHLE
CONSTANCE L. WORLINE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

DANIEL L. ALLEN
PATRICK W. BROWN
WILBERT R. BYNUM
KEVIN J. CARRIER
MARK P. DIBBLE
RUDOLPH K. GEISLER
JOHN C. GROESCHEL
SHAWN D. GRUNZKE
MICHAEL S. HANSEN
ERNEST D. HARDEN, JR.
KEVIN W. HINSON
SCOTT J. HOFFMAN
GLENN J. LINTZ
JOSEPH F. MAHAN
MARK S. MURPHY
MICHAEL B. MURPHY
ROBERT B. OAKELEY
DAWN D. RICHARDSON
WALTER W. ROBOHN
JOSEPH F. RUSSELL IV
FRANKLIN R. SARRA, JR.
JOSEPH W. SCHAUBLE
CLIFFORD G. SCOTT
AARON K. STANLEY
HARRY T. THETFORD, JR.
MICHAEL E. THOMAS
JOSEPH M. VITELLI
MARK W. WERNER
DONALD J. WILLIAMS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

LUIS A. BENEVIDES
RICHARD D. BERGTHOLD
PHILIP J. BLAINE
MICHAEL D. BRIDGES
DANIEL J. CORNWELL
MARY F. DAVID
WILLIAM F. DAVIS
EUGENE M. DELARA
DANNY W. DENTON
LYNN T. DOWNS
JOHN F. FERGUSON
MICHELE A. HANCOCK
RICHARD J. JEHUE
MARY E. JENKINS
SCOTT L. JOHNSTON
DAVID E. JONES
MARVIN L. JONES
JEANMARIE P. JONSTON
KEVIN L. KLETTE
KIM L. LEFEBVRE
JAMES A. LETEXIER
MARIA K. MAJAR
MANUEL E. NAGUIT
ROBERT E. NEWELL
JOSEPH J. PICKEL
ROBERT A. RAHAL
JOHN A. RALPH
DYLAN D. SCHMORROW
RUSSELL D. SHILLING
LESLIE L. SIMS
ELIZABETH A. M. SMITH
DEBRA R. SOYK
ANNE M. SWAP
MICHAEL S. WARRINGTON
TIMOTHY H. WEBER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES NAVY
UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

BRIAN A. ALEXANDER
LYNN A. BAILEY
KEVIN P. BARRETT
WALTER S. BEW
KENT A. BLADE
MARGARET CALLOWAY
BROOKS D. CASH
DAVID W. CLINE
MICHAEL J. COLSTON
CATHERINE S. COPENHAVER
GLEN C. CRAWFORD
JUDITH M. DICKERT
CHRISTINE E. DORR
ALLAN M. FINLEY
WALTER M. GREENHALGH
MARK E. HAMMETT
ERIC P. HOFMEISTER
MICHAEL T. HOPKINS
GREGORY W. JONES
EDWARD B. JORGENSEN
FREDERICK C. KASS
DAVID J. KEBLISH
MARK A. KOBELJA
GREGORY J. KUNZ
KENNETH M. LANKIN
PATRICK R. LARABY
ROBERT P. LARYS
JOSEPH T. LAVAN
PATRICK L. LAWSON
NORMAN LEE
CON Y. LING
JASON D. MAGUIRE
RICHARD T. MAHON
FREDERICK J. MCDONALD
DAVID B. MCLAREN
ROBERT D. MENZIES
MARK E. MICHAUD
ALLEN O. MITCHELL
SANDOR S. NIEMANN
RICHARD J. PAYER
DAVID S. PLURAD
TIMOTHY J. POREA
MAE M. POUGET
KENNETH G. PUGH
SCOTT W. PYNE
CHRISTOPHER S. QUARLES
RICHARD D. QUATTRONE
JEFFREY D. QUINLAN
JUAN P. RIVERA
MARY K. RUSHER
CRAIG J. SALT
JOHN W. SANDERS III
ELIZABETH K. SATTER
JUDY R. SCHAUER
BRYAN P. SCHUMACHER
ZSOLT T. STOCKINGER
MICHAEL D. THOMAS
WILLIAM E. TODD
JOHN M. TRAMONT
SHARON M. TROXEL
GUIDO F. VALDES
CHRISTOPHER WESTROPP
JON S. WOODS
PETER G. WOODSON

CONFIRMATION

Executive nomination confirmed by
the Senate, Thursday, June 4, 2009:

DEPARTMENT OF HOMELAND SECURITY

DAVID HEYMAN, OF THE DISTRICT OF COLUMBIA, TO BE
AN ASSISTANT SECRETARY OF HOMELAND SECURITY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO
THE NOMINEE'S COMMITMENT TO RESPOND TO RE-
QUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY
CONSTITUTED COMMITTEE OF THE SENATE.