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Senate

The Senate met at 10 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

The PRESIDING OFFICER. Today's prayer will be offered by guest Chaplain Rabbi Ellen Bernhardt, Headmaster of Albert Einstein Academy, Wilmington, DE.

PRAYER

The guest Chaplain offered the following prayer:

God, Creator of the universe, source of all goodness and mercy, we thank You for the bounty that is ours in this world. Help us to live so that we may be worthy of Your love as we strive to do Your will. You have created each one of us with uniqueness and implanted within us a spark of the divine.

We come from many backgrounds and ancestries, and we are bound together in these great United States of America with its cherished values and high ideals. Let us remember the gifts and responsibilities that God has given us as we strive to perfect the world in our days and for generations yet unborn.

We beseech You to give strength and wisdom to our Senators so that they will continue to do their work in this great Chamber and in every cubicle across this land. May they have the patience to listen to the voices of others, the vision to see within the hearts of each person, and the tenacity to continue to strive to make this world a better place for all humanity. And let us all say, Amen.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI, a Senator from the State of Alaska, 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. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LISA MURKOWSKI, a Senator from the State of Alaska, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Ms. MURKOWSKI thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

SCHEDULE

Mr. BROWNBACK. Madam President, this morning the Senate will conduct a period of morning business for up to 60 minutes, with the first half under the control of the majority leader and the second half under the control of the Democratic leader. Following morning business, the Senate will resume consideration of the Department of Defense authorization bill. Senators WARNER and LEVIN will continue working on amendments today and rollcall votes are expected on amendments to the bill throughout the day. Senators will be notified when the first vote is scheduled.

The majority leader announced last night that the fiscal year 2005 budget resolution conference report may become available and we may consider that conference report before the week concludes. Votes will occur over the next 2 days. Members should plan accordingly.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada, Mr. REID.

ORDER OF PROCEDURE

Mr. REID. Madam President, if the distinguished Chair would allow me a unanimous consent request, at the time the Democrats' morning business hour begins, I ask unanimous consent that Senator SCHUMER be recognized for 12½ minutes and Senator BILL NELSON be recognized for 12½ minutes.

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

The Senator from Kansas.

MASSACHUSETTS COURT SAME-SEX MARRIAGE DECISION

Mr. BROWNBACK. Madam President, I take a few minutes of the leader's time to speak in morning business on one of the issues this week that has

drawn, obviously, the attention of everybody across the country. It has happened in Massachusetts where, 3 days ago, in keeping with the rulings of four Massachusetts Supreme Court justices last November, the State of Massachusetts started issuing marriage licenses to same-sex couples, as thousands descended on the State.

This event has significant repercussions for all Americans. According to news reports, local officials across the State were giving licenses to all who requested them, without asking for proof of State residency. This is in open defiance of Massachusetts law, which bars out-of-State couples from marrying in the State if the union would be illegal in their home State.

Let there be no mistake about this. The stakes in this battle over the future of our culture are enormous. This attempt by an imperious judiciary to radically redefine marriage by a few people is both a grave threat to our central social institution and a serious affront to democratic rule in our Nation.

Our reaction to this threat hinges on not only the future of marriage, which is a foundational unit for building a strong society, but our future as a self-governing people as well—whether the people here rule or a few on the judiciary. The actions of the Massachusetts Supreme Court in Goodridge v. Department of Public Health, to mandate homosexual marriage, is simply the latest instance of arrogant judges riding roughshod over the democratic process and constitutional law alike, in a quest to impose a radical social agenda on America.

The decision in this case could not have been more radical. The court declared that our society's longstanding, historical understanding of marriage as between a man and a woman was irrational or completely lacking a foundation in reason. As such, according to the court, the only possible explanation for the State denying marriage licenses to homosexual couples is prejudice, which the court compared with racial prejudice of the past that opposed interracial marriages. This analogy, of course, is false. It is misleading. The vast majority of African Americans recognize that. The vast majority of all Americans recognize it. All America should have the right to marry whomever they choose, regardless of race. But while most Americans believe that homosexuals have a right to live as they choose, they do not believe that a small group of activists or a tiny judicial elite have a right to redefine marriage for the entire society and to impose this radical social experiment on the culture.

Almost every benefit that is being sought can be attained through contract or power of attorney. But let us be clear, this is not a battle over civil rights. It is a battle over whether marriage will be emptied of its meaning in contradiction to the will of the people and their duly elected representatives.

This is a key issue. I look for this body to take up the issue in a constitutional amendment defining marriage as between a man and a woman. This is going to be a very difficult discussion. I hope we can have a good, healthy discussion about the importance of marriage as a foundational building unit in this society, a marriage between a man and a woman bonded together for life. That, indeed, is the best place to raise children according to all of our sociological data. This institution has been in disrepair for 40 years—has had difficulty for a long period of time—but this is not the answer to curing it. This will harm it.

While this is going to be a difficult debate and discussion for us as a country, it is a valuable and important one for us to have. I look forward to this body, later this year, voting on a constitutional amendment defining marriage as between a man and a woman.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I yield up to 10 minutes to the Senator from Colorado.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

ACCOMPLISHMENTS OF THE LAST FOUR YEARS

Mr. ALLARD. Madam President, I thank the Senator from Texas for yielding.

I want to talk a little bit about what has happened during the last 4 years after the President assumed office, and after we have had a Republican Congress.

I think there were problems within the world and within this country that nobody wanted to admit were happening.

For example, when this President took office, the economy was going down. The previous President—President Clinton—didn't want to admit that, but it was a fact. And that is an accepted fact today which everybody understands.

Look at what the economy was doing when President Bush assumed office. The economy was going down. This President and this Congress, instead of putting the problem off to future generations and putting out a lot of rhetoric, did something. We cut the tax burden to stimulate this economy, and today the economy is doing much better. Employment is growing. We have a strong economy; it is getting stronger. People are being productive. We are getting people into homes. Right now, we have the highest home ownership rate in the history of this country, which means people of all races and ethnic backgrounds are getting an opportunity to own a piece of America. That is where the strength of this country is.

Because of this President and this Congress working on those kinds of issues, there is a real difference in people's personal lives.

The other thing that was not recognized and which some people wanted to ignore is the fact that we are much more secure today than we were 4 years ago. We didn't realize, 4 years ago, the threat that was happening as far as America.

I recall an opportunity where I was interviewed on BBC. This was an interview that happened a couple or 3 years back. There was an individual on the other side who was from the Middle East.

He said: Senator, what you don't realize is that you have been at war in America for 5 years already because of what is happening in the Middle East. They have already declared war on you.

If you look at it historically, we had a few terrorist attacks on small areas that were rather insignificant. We ignored them. Then we had terrorist attacks on our embassies. We ignored them. We had a terrorist attack on Khobar Towers, and we ignored it. We had the attack on the USS *Cole*, and we ignored that. Then we had the World Trade Center in New York, and basically that was ignored. Finally, it took the attacks by terrorists on the Twin Towers and the Pentagon of the United States for people to wake up, and this President and this Republican Congress stepped to the plate and we dealt with those security issues. We provided the money to make this a modern military. This President said we needed a more modern military; that is, more mobile because times are changing.

Our threat is terrorism throughout the world. We need to be prepared to address that. This President and this Congress didn't put that off to the next generation. We didn't put it off until somebody else would make a decision—some future Congress or some future President. We addressed that problem immediately. We got after it. We are continuing to get after it. We still have a concern.

I am excited about the fact that we are now talking about sovereignty for Iraq where they are going to be their own leaders. That doesn't mean necessarily that we are going to have less involvement as far as the conflict is concerned.

But we need a leader in this world who is trying to promote world peace. And we need a leader who is trying to secure the economic health of this country and the world, too.

If we look back at the accomplishments of the last 4 years, there is a lot to be proud of. I am glad we had some real leadership in the White House. I am glad we had some real leadership in both the House of Representatives and the Senate that took on those issues. They are not easy issues. They are difficult issues.

But the good message to the rest of the world is, America is stepping to the plate.

I am looking forward to continuing the fight and the work with my other Members to make sure we have a strong economy. That is a challenge.

We need to make sure those tax cuts we provided are stimulating our economy and economic growth; make that economic engine go so we have a free market system which is working; and make sure those incentives are out there so Americans who work hard are justly rewarded and they can keep the benefits of their hard work in their own pockets and it doesn't have to be sent to the Federal Government for it to spend; they get to spend it themselves in their own communities to meet there own needs. That means less government. It means we can rely more on individuals to assume responsibility. We need to work to make sure we create opportunities for everyone.

That is the challenge we have ahead of us. Tax cuts are expiring. One of the challenges we are facing in the Senate is the budget deficit. We have to be sure we reduce the deficit. Our economy is responding to the tax cuts. I don't think anybody can say tax cuts didn't help. We have to keep our country strong for our security.

We still have challenges, we recognize that. But we have to face up to those challenges and not push them off to future generations.

I happen to believe you have to stand up to terrorism. We learned the hard lesson. We learned if you ignore terrorism, it doesn't go away. We learned that you have to stand up to the terrorists. If you do not, with each success the recruitment of terrorist groups goes up. We saw that. With each success, the terrorist groups get more money, they get better financing, and they are a greater risk.

I compliment this President. I am proud to be a part of a body which has over the last 4 years made a difference in this country. That is not to say we do not have a lot of challenges; we certainly have a lot of challenges. But we are off to a good start. We need to continue.

I look forward to working with this President for another 4 years because I think he has done a good job in leadership. I think this country needs him.

I think this Congress has some challenges ahead of it, and we need good, strong leadership.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Madam President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 18 minutes remaining on the Republican side.

Mrs. HUTCHISON. Madam President, I would like to be notified at the end of 5 minutes, after which I will yield the remainder on our side to the Senator from New Mexico.

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

COMMITMENT TO NATIONAL SECURITY

Mrs. HUTCHISON. Madam President, we just heard a wonderful talk by the President of the United States. He talked about our commitment and reminded us once again that our commitment to winning in Iraq is everything. There is no alternative. The President talked about the commitment of winning the war on terrorism.

That means we must stabilize Iraq. We must begin to show the people in the Middle East what freedom, free enterprise, economy and jobs can do, and an educational system that includes boys and girls, giving them hope for the future.

He reminded us of the commitment we must make to see the war on terrorism through. This is not going to be a war that goes exactly the way it was planned. Name for me a war that did. Name for me a war that we said, Here is what is going to happen, and it happens just that way. This is war. We have been attacked. Thousands of Americans have been killed by fanatics. Nick Berg was assassinated on videotape in a brutal manner by terrorism. This will continue to happen if we lose our resolve. There is only one way that we can lose; that is, for America not to see this through.

It means winning the immediate war. It means stabilizing Iraq and Afghanistan. It means sowing the seeds of freedom and representative government in those countries to show how it can be done where people have not lived in freedom for years. We must see it through. But it means more than just the next year in which we have the big important war on terrorism that we see evolve before our eyes. It means we are going to have to stick with it for 25 or 30 years because it is going to take that long to show education can give children hope for the future, so you will not be able to brainwash a child to think life is not worth living, that the best thing one could do with their life is to give it up by killing other people in a suicide bomb.

The only way to warp children to believe a suicide bomb is their best hope in life is by failing to give them an education. An education gives them hope for a future, for a job, for a family, for a quality of life that is worth living.

The President of the United States is laser-beam focused. He is focused on winning the war on terrorism for the security of the American people and for the ability for freedom to live throughout the world. If America does not carry the beacon and the flag for freedom in the world, who will? Who has the capacity and the will to do it? If freedom dies in America, it will not flourish for very long anywhere else on Earth. That is why the President is so focused on the security of our country by finding and winning the war on terrorism.

We see people wringing their hands, asking, What can we do. We see the assassination of Nick Berg on videotape and we ask, What can we do to get out of this. We can make sure the violent death of Nicholas Berg is not in vain, that the hundreds of Americans who have died in this cause do not die in vain, that they are dealing with an America that has the leadership to stand up for our country and our security and our freedom and see it through. That is what the President of the United States is doing for our country today. We must not lose focus.

I ask unanimous consent to have printed in the RECORD an article by David Brooks from the New York Times.

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

[From the New York Times, May 18, 2004.]

IN IRAQ, AMERICA'S SHAKEOUT MOMENT

(By David Brooks)

There's something about our venture into Iraq that is inspiringly, painfully, embarrassingly and quintessentially American.

No other nation would have been hopeful enough to try to evangelize for democracy across the Middle East. No other nation would have been naive enough to do it this badly. No other nation would be adaptable enough to recover from its own innocence and muddle its way to success, as I suspect we are about to do.

American history sometimes seems to be the same story repeated over and over again. Some group of big-dreaming but foolhardy adventurers head out to eradicate some evil and to realize some golden future. They get halfway along their journey and find they are unprepared for the harsh reality they suddenly face. It's too late to turn back, so they reinvent their mission. They toss out illusions and adopt an almost desperate pragmatism. They never do realize the utopia they initially dreamed about, but they do build something better than what came before.

This basic pattern has marked our national style from the moment British colonists landed on North American shores. Overly optimistic about the conditions they would find, the colonists were woefully undercapitalized, underequipped and underskilled. At Jamestown, there were three gentlemen and gentlemen's servants for every skilled laborer. They didn't bother to plant enough grain to see them through the winter.

But they learned and adapted. Settlement companies were compelled to send more workers, along with axes, chisels, scythes, millstones and seeds. Eventually the colonies thrived.

Centuries later, it was much the same. The guides who aided and fleeced the pioneers who moved West were struck by how clueless many of them were about the wilderness they were entering. Their diaries show that many thought they could establish genteel New England-style villages in short order. They leapt before they looked, faced the shock of reality, adapted and cobbled together something unexpected.

And it is that way today. We are tricked by hope into starting companies, beginning books, immigrating to this country and investing in telecom networks. The challenges turn out to be tougher than we imagined. Our excessive optimism is exposed. New skills are demanded. But nothing important was ever begun in a prudential frame of mind.

Hope begets disappointment, and we are now in a moment of disappointment when it comes to Iraq. During these shakeout moments, the nay-sayers get to gloat while the rest of us despair, lacerate ourselves, second-guess those in charge and look at things anew. But this very process of self-criticism

is the precondition for the second wind, the grubbier, less illusioned effort that often enough leads to some acceptable outcome.

Today in Iraq local commanders seem to be allowed to try anything. We are allowing former Baathists to man a Falluja Brigade to police their own city. We are pounding Moktada al-Sadr while negotiating with him. There is talk of moving up elections so when an Iraqi official is assassinated, he is not seen as a person working with the U.S., but as a duly elected representative of the Iraqi people.

Some of these policies seem incoherent, but they may work. And back home a new mood has taken over part of the political class. The emerging responsible faction has no time now for the witless applause lines the jeering jackdaws on left and right repeat to themselves to their own perpetual self-admiration and delight. Even in a political year, most politicians do not want this country to fail.

There are, for example, members of Congress from both parties who feel estranged from this administration. They feel it does not listen to their ideas. But in this troubled hour, they are desperate to help. If but a call were made, they would burst forth with intelligent suggestions: about Iraq, about political tactics, about getting additional appropriations.

Remember, the most untrue truism in human history is that there are no second acts in American life. In reality, there is nothing but second acts. There are shakeout moments and redundantly, new beginnings. The weeks until June 30 are bound to be awful, but we may be at the start of a new beginning now.

Mrs. HUTCHISON. I yield the remainder of my time to the Senator from New Mexico.

Mr. DOMENICI. How much time do I have?

The ACTING PRESIDENT pro tempore. There is 12 minutes remaining.

HIGH ENERGY PRICES

Mr. DOMENICI. Madam President, again this morning I will talk about energy. I hope I have an opportunity each week until we come to our senses and pass an energy bill to remind the American people one of the reasons gas prices are spiraling, one of the reasons we are skeptical about our future is the tremendously high price of crude oil.

That will never be reduced until America makes a commitment, until the people of the world and the producers of oil understand the United States of America is not going to sit by and do nothing. We are going to have a comprehensive policy with one objective. That is to produce more alternatives that can be used by the American people to satisfy and supply their energy needs. That means we want to do more to produce natural gas, not sit idly by and let the demand increase and soon be dependent on foreign countries for natural gas.

The occupant of the Chair comes from a State that has an abundance of natural gas. But we have to bring it to the lower 48 States. The Energy bill which we propose, that the other side of the aisle for the most part defeated, had a powerful provision which will bring natural gas from Alaska. It also had a provision that will get the maximum amount of natural gas from our sources in America.

The price of gas in California this week averaged $2.27; in San Francisco, it hit $2.79; in Brooklyn, it was $2.49. Each time our citizens pump a gallon of gas in their cars, they should remember a majority of the Senators in this body, led by the Republicans, has been trying to pass a comprehensive energy legislation package. They are blocked each time by a filibuster led by the other side of the aisle, the Democrats, who, for some reason, find an excuse on every energy bill we propose. Either this must be changed, that must be changed, or this must be added—until we end up with nothing.

Fellow Senators, the Energy bill is not a silver bullet to lowering the price of gasoline. It does, however, set forth a plan for the future. The Energy bill will increase domestic oil and natural gas production that helps balance supply with our growing demand. The Energy bill does a number of technical things. It removes a 2-percent oxygenate mandate that will make it easier on refineries to make gasoline that can be traded between regional markets. The Energy bill addresses the proliferation of boutique fuels. There are a number of State-specific gasoline reformulations that make refining more challenging and make marketing inefficient. We can go on and on.

This bill provides basic research in hydrogen power. Many ask, How are we going to get ourselves off of this tremendous demand for gasoline and crude oil derivatives? One is hydrogen power. How do we do that without an energy bill that sets a policy of spending the research money on hydrogen power with the automobile manufacturers to come up with a solution?

We try, as part of a comprehensive energy bill, I said, try as we may—we cannot satisfy the other side of the aisle. I wonder if they really want an energy bill. I am beginning to think it is their way or no way. They might even think the President of the United States might be helped too much with an energy bill. I hope that is not true.

The benefits are being denied to the American people. Some people want to kick the political football around and they hope they can score a touchdown. We are actually going to score in higher energy prices—and higher energy prices hurt the economy. I am a football fan. But that is one touchdown I don't want to see scored.

Right now we are focusing on high gasoline prices. High gasoline prices are tied to the price of oil. What has been making the price climb? We know there is huge demand in the world led by China, which is gobbling oil like you would think there was no end to the supply. In addition, there is a risk factor being built into the price because of terrorism and the vulnerability of oil production. There is a risk factor that is causing those who produce and sell it on the world market to not go rock bottom but to go as high as they can because they are afraid of terrorism.

We have to be hopeful that the cartel and those who are producing oil, who are listening to our President, some of whom have been friends of America, we are hopeful they will see the light of day, that this price they are forcing on the world is not good for them, either; it is bad for their friends; it is bad for the world. Ultimately, it is not good for the producing countries.

Our President is taking a leadership role with reference to the energy-producing countries. He is trying to cajole, to talk to them, to work on them so they will increase production and hopefully bring down the price of oil. Some want to embarrass the President by offering resolutions directing him to do what he is doing. Some want to use the Strategic Petroleum Reserve as if that reserve, which is there for emergencies, could, in fact, help with these high oil prices. The last time we tried, it affected gasoline prices by 1 cent. Do we want to reduce the emergency oil we have and then find in a few months the terrorists do something and we are short of oil and then we have a real problem because of it? SPR was for that kind of situation.

Perhaps people forgot the last time Iran cut a little bit of the supply to the world, America was affected in a dramatic way. That caused us to build SPR so we could never be immediately cut off and immediately forced to have our economy disrupted by a challenge from outside. Why do we want to risk that when the consequences will be very little?

Maybe some think they can blame an economic downturn, because of high energy prices, on President Bush. They will not succeed. President Bush's economic policy has brought America from a recession to a vibrant, growing economy. Its gross domestic product increases are the highest in 20 years—not 2 years, not 5 years, in 20 years. So they are not going to deny that by filibustering an energy bill.

But I can tell you, the purpose of debating in the Senate is to let the American people know who is responsible for what. And I don't know what to do. We have tried everything with reference to getting an energy bill. Maybe we ought to ask the Democrats to sit down and talk about what they need. I am not sure we could get anything out of that because I am not sure they know. Because it seems to me anything we try just cannot get anywhere because one group or another, principally on the other side of the aisle, seems to find fault; and there we go, we get nothing done.

Now, we have some who want to investigate the oil companies because of the prices. I have, in this statement, a list of the investigations that have occurred and who has done them. They are powerful, neutral bodies that have done them. They did one for California because their prices went skyrocketing. Nobody can find collusion or

price fixing. What has happened is the world demand is monstrous, and the cartel and others that are not part of it want to hold supply down to let prices go up.

And what do we do? We sit here in the U.S. Congress, wring our hands, and complain and worry and talk about President Bush needing a plan. Look, he gave us a plan. If you want to argue about how he did it, go ahead, but look at it and see what it will do. For the most part, the things in that plan are exactly what America needs. We need to maximize our own production of oil. It will not be sufficient, but we can do some things. We need to maximize the production of natural gas. We need to maximize the potential use of coal. We need to build every alternative into our national plan. Wind energy and solar energy need the incentives that are required. And, yes, in the end we have to put some incentives in to get started with nuclear again. But we do not have to have all of these. We need the basics. You cannot even get those done.

So from my standpoint, I hope we will quit blaming, quit wringing our hands, quit talking, especially on the other side of the aisle, about what we need to do, when, in fact, they are denying the very things they say we need to do by not voting for the things they are talking about. In fact, I think we could go through the RECORD and find that many on the other side have gotten up and made speeches about what we need to do, and you could go down and tick them off, and most of them are in the Energy bill. Most of the things they talk about are in the Energy bill, but for some reason they would rather talk about it than vote for it. They would rather talk about it than offer amendments and get the thing going.

I think what we ought to do soon is offer a bill and offer a unanimous consent suggestion that we put it up here and we have 10 amendments on each side and then we proceed to vote. I think that would be a fair way to handle the energy crisis of America. It would say, quit fooling around. You get 10 amendments. That ought to be enough to get your purposes out there. We get 10. Then it is over with, and we vote. But I am sure if you tried that, every excuse in the world would be forthcoming. Nobody will say: We need an energy bill. Let's do something. They will say: Oh, no, it doesn't have this. There is a chance, a risk we will get hurt. They won't take care of this and they won't take care of that and we will get nowhere.

So I close by saying I was also privileged to hear the President speak this morning. The Senator from Texas talked about it. I, frankly, have nothing but admiration for his fortitude, his strength, and his determination. I think if the United States and its people can quickly assess the blame with reference to the prisons and get on with letting our President and the military people stabilize Iraq and let them begin to decide their future as free people who do not have to worry about getting killed, the sooner we can let that happen, the sooner America will be back on the right track. But I am not sure that everybody in this country wants to get that over.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DOMENICI. Madam President, I ask unanimous consent to have 1 additional minute.

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

Mr. DOMENICI. Madam President, I close by saying I would hope that as we prepare to go out for recess, everybody in this body will examine their conscience, examine their positions, and that maybe they can come back and say: Let's sit down. Let's get an energy bill. Let's get the maximum kind of flexibility for production of alternatives in this country. Let's see if we can't make the American electric energy grid more powerful, stronger, more reliable, and see that it can grow and prosper.

It is our future. How we energize it is our challenge. We cannot do it with natural gas alone. We have to have alternatives. That is what we had proposed. We must decide that we are going to try. I chose this committee—left the Budget Committee—because I knew how important this was, but, frankly, I never thought there would be so many people who wanted to make it so hard for us to get an energy policy as has happened. I could not believe it, as a veteran Senator. Frankly, I am amazed there are still those on the other side who want to blame somebody, want to tell us what we ought to do but do not want to vote for anything.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. CARPER. Madam President, as Senator DOMENICI prepares to leave the Senate floor, I thank him for his tenacity and his earnest desire to lead us to a balanced energy policy. I think he knows there are plenty of us on this side who do want to reach the right balance, and I have enjoyed trying to provide a little bit of that balance.

Mr. BIDEN. Madam President, will the Senator yield for a unanimous consent request?

Mr. CARPER. I am happy to yield.

ORDER OF PROCEDURE

Mr. BIDEN. Madam President, I ask unanimous consent that the Democratic side be given an additional 10 minutes of morning business, with the time equally divided between Senator CARPER and myself. Before the Chair acts on this request, I am told it has been cleared by the Republican side.

Mr. DOMENICI. We have no objection.

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

Mr. DOMENICI. Madam President, I wonder if the Senator will yield for 30 seconds?

Mr. CARPER. I yield.

Mr. DOMENICI. Madam President, I say to the Senator, I heard your remarks, and I do want to say to the Senator, that while I do not know your overall feelings about an energy bill, I will say on a couple of very difficult issues that I think are very important that were contentious—and many people on your side did not think we ought to do—you stood tall because you understand that we need diversification and you are not afraid to make votes. And I thank you for that.

Mr. CARPER. I thank the Senator.

Madam President, on a brighter note, with respect to energy policy, a week or so ago we passed a major bill called FSC/ETI. Some people call it the JOBS bill or a trade bill. But provisions of the Energy bill were incorporated in that legislation, important provisions that include incentives for renewable forms of energy—solar, wind, geothermal—and incentives to encourage people to buy more energy-efficient vehicles, hybrids, fuel-cell vehicles, to make them more affordable, to get more of them out on the road, and using less gasoline and diesel fuel, and also incentives for us to begin converting to a greater use of what I call biofuels—ethanol—and something we do in Delaware a lot on the Delmarva Peninsula where we take soybean oil and mix it with diesel fuel.

They were able to do something good for the environment and actually reduce significantly our use of diesel-powered vehicles.

While it is still mid-May, we have a fair amount of time to go before we finish here. Before we finish, I hope we will find common ground on the rest of the energy policy, and that it is also respective of our environment and the clean air concerns we have, and gives the States the ability to recover damages for their drinking supply that has been damaged by MTBE.

GUEST CHAPLAIN RABBI BERNHARDT

Mr. CARPER. Mr. President, I express to Senator BIDEN my appreciation for his inviting a wonderful woman, a rabbi from Delaware, to come here to be our guest Chaplain, and to say how pleased we are, all of us, to welcome Ellen Bernhardt. She gave the invocation about 40 minutes ago. I told her it was one of the best invocations I have heard in the 3 years I have been privileged to be a Senator. It was as good as any I have heard. We thank you for not only coming to bring the blessing of that invocation, but to remind us about what really matters.

I also thank her for just what she does in Delaware. She has been a rabbi, I think, about 17 years. She is a native of Philadelphia. For the last 11 years or so, she has run a school in Delaware which is, I believe, the only Jewish day

school in our State. We have a lot of schools, but only one Jewish day school—Albert Einstein Academy. There are youngsters in kindergarten, from age 5, up to the sixth grade. While it is a Jewish day school, it is nondenominational because whether the students happen to be Jewish or not, they can attend that school. I was kidding earlier about how most of them are Baptists. Actually, I don't think that is the case. That gives you the flavor of the nondenominational school. I have been privileged to know a number of the kids who go there. They get a wonderful education and start for their lives and go on to do great work.

We have been joined today not only by Rabbi Bernhardt, but also by three of her children and her husband. We are so privileged that she lives in Delaware and that she provides great leadership on the educational side, and also for a lot of us on the spiritual side, whether we happen to be Jewish or not. Welcome.

Again, to my friend, JOE BIDEN, I thank him for making it possible for her to be here today.

Mr. BIDEN. Madam President, Delaware is a small State and everyone seems to know everyone else. We know just about everyone in the State. You can't go to the grocery store, church, synagogue, or mosque without running into people you know. We go to each other's events. It is a little like Alaska—small. Alaska is gigantic, but the population is small. We go to each other's gatherings, and we are affected by each other's achievements and each other's milestones, and we are affected by each other's losses. Sometimes the closeness gets us in trouble, but I would not change it for the world.

It has been an honor and a pleasure to represent my State and to have the pleasure over the years to invite several members of our clergy to come and be guest Chaplains.

Rabbi Ellen Bernhardt is our guest Chaplain today. As Senator CARPER said, she is finishing her 11th year at the Albert Einstein Academy in Wilmington, not far from where I live. The academy is open to all students, although it is the only Jewish day school in our State.

It has been a pleasure visiting the school on a number of occasions. Over the years, we have spent a fair amount of time in fundraising events together, sharing the dais, and attempting to see to it that the school remains vibrant. That has been going on, actually, before the rabbi was running the school. But the fact is, her dedication, talent, faith, and deep abiding commitment to her students and her work in my State has touched many people in our community. For that, we are all very grateful.

I believe I speak for all my colleagues when I say thank you for your thoughtful, inspirational invocation this morning. We need it badly at this moment in the United States. We are honored to welcome you to the floor of the Senate.

I arrived here almost 32 years ago and I feel the same amount of pride today that I felt then as I walk out on this floor. I know that sounds corny, but I really do. I am incredibly proud of this institution. I remember the first time I walked on the floor; my temporary desk was the second from the end over there. I realized I was standing next to the desk where Daniel Webster sat. I thought to myself, it is the only time I actually thought, my God, what am I doing here? In the last 31 years, some in my constituency have said: My God, what is he doing there? I have become accustomed to it. My impression at that time—and I don't know the rabbi's impression—was how small this Chamber is. There is a closeness to it. It is a comfort. Anyway, I am proud we are able to share the floor with the rabbi today.

Let me say, my relationship and personal connection with the rabbi is a quintessential example of the nature of the State of Delaware.

I happen to know that the rabbi grew up over her father's drugstore in Belfonte, which I frequented a lot. I went to St. Helena, a Catholic grade school in Claymont. Everybody knew your father's drugstore. Everybody hung out in your father's drugstore. I am considerably older than the rabbi. So we basically come from the same small neck of the woods, the same small neighborhood.

The rabbi's father was a heck of a guy, by the way. As a kid and a member of the Congregation Ades Kodesh Shel Emeth, Ellen would study after school with her rabbi, Rabbi Leonard Gewirtz—a man I always affectionately referred to as literally ''my rabbi.'' He introduced me frequently. He became my first tutor—literally, not figuratively—because of my interest in theology and the Holocaust. I remember speaking up at a college, a rabbinical school in Philadelphia. I remember those big old thick shoes he used to wear, the kind that laced up the side and squeaked on a linoleum floor. I was speaking in this room that was not very commodious for speaking; it was long and with low ceilings, and the podium was in the middle. It was a shoal, actually. He came late and wanted to hear me speak. He opened the door and the congregation was seated and the door smacked against a pew. He walked in and, as you know, he walked right up to the front and sat down. It was kind of a tense moment. Everybody wondered who is this guy walking in. I said, ''My rabbi has arrived.''

After speaking to this all-Jewish congregation, a group of ladies my mom's age, who were in an atrium that connected the shoal to the university, the school—as I walked out, they were arguing. I could hear them saying: Yes, he is. No, he isn't. Yes, he is. A lady grabbed me by the coat and said: You said ''your rabbi. He had a similar influence on me—though much more profound to you but no less significant to me.'' He was a great man.

He was famous for his passionate sermons from the pulpit, his love for Jewish education, his love for Israel and the community he served.

Rabbi Gewirtz was truly a spiritual leader and, as Ellen will tell you, is the reason she decided to become a rabbi. We truly miss him, but his spirit is with her today. I know he is looking down and is very proud. He was also proud of this place, proud of this country, proud of the Senate. To have you here, I am sure, he is smiling.

There are a lot of other things I could and would like to say about Ellen. As I said, we are very similar in the sense that we are truly products of our parents' upbringing and, knowing her story, it is no surprise to me that she has devoted her life to Jewish education, community service, and to her family.

Her grandparents came to this country by way of Ellis Island. Her entire mother's side of the family chose to remain in Eastern Europe and were tragically killed in the Nazi Holocaust.

Her extended family was conspicuously absent from her life. As one can imagine, this had a profound effect on Rabbi Bernhardt and her family's life, priorities, and values.

Her father, Herman Gordon, was one of the many heroic members of the Armed Forces who chose to enlist in the Army Air Corps at the outset of World War II. Mr. Gordon served as a waist gunner on the Flying Fortress B–17 bomber.

Based in England, his unit performed missions over France and Germany, clearing the way for our troops to land on the beaches of Normandy. On his 24th mission, his plane was shot down over Germany. As a Jew, he became a prisoner of war in Germany for 9 months. The latter 3 months of his imprisonment was spent marching at gunpoint on the infamous ''death march''—a desperate move by the Nazis to relocate their POWs straight into the heart of Germany, out of the hands of the Allied forces which were closing in, which I always thought was a metaphor for the insanity, the lust of Hitler and Nazi Germany. This nightmare all came to an end when Mr. Gordon's camp was liberated by General Patton's army.

It is quite a story, quite a heritage, and quite a family. As my dad, who passed away about a year and a half ago, would say: Girl, you have good blood; you have real good blood.

I only hope our children and grandchildren develop an appreciation for the sacrifices of so many Americans, such as Ellen's father, and the thousands of soldiers who are currently serving abroad have done for this country.

One of the reasons I am telling this story is to give my colleagues and constituents back home an insight into what motivates our guest Chaplain this morning to energize her students, family, and friends to better the Delaware

community and to uphold our American values with the same patriotic zeal exemplified by her father.

Last year, for the fourth consecutive year, I submitted a resolution in the Senate to designate the week of Veterans Day as ''National Veterans Awareness Week.'' It explicitly underscores the need for our schools to develop educational programs to highlight the contributions of veterans in our country.

This past year, Ellen held a very moving ceremony. The school invited every friend, relative, or neighbor of a student who served in our military to come and speak at the ceremony in front of the entire school and faculty about their experiences.

Madam President, included in the list of speakers was the mother of LT Scott Travis, a Wilmington native, a graduate of Brandywine High School and West Point, who is currently serving in Iraq.

The ceremony brought real people with real stories into the classroom and gave the kids a tangible sense of what it meant and what it means to sacrifice for one's country. The climax was when students pinned medals on the veterans in attendance as a way to personally thank them for their service.

That is the kind of school Ellen runs. That is the kind of person Ellen is.

By the way, for the record, let me say that in my 31st year in the Senate, Rabbi Bernhardt is only the fifth guest Chaplain I have invited from Delaware, following in the footsteps of Father Jim Trainer from St. Patrick's Church, Rabbi Kenneth S. Cohen from Congregation Beth Shalom, and Father Robert Balducci from St. Anthony's Parish.

From where I sit, you are in good company and so are they.

I thank Rabbi Bernhardt for being here this morning. By the way, you should be very proud of your son sitting behind me who is a relatively new member of my staff. He is already having an impact in the conduct of business around here.

Again, I know I speak for all my colleagues when I welcome you and your family here today. Thank you for the sacrifices you have made for this country, and thank you for the values you are imprinting on the young men and women of my community.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Madam President, the distinguished ranking member of the Foreign Relations Committee wishes to speak on an important subject. Will the Senator indicate how much time he wishes to take?

Mr. BIDEN. Madam President, I say to the Senator, I do not want to interfere. I want to speak for about 10 minutes regarding Ahmed Chalabi. I do not have to do it now.

Mr. REID. Madam President, I say to the distinguished ranking member, we have 25 minutes that have been allocated. We could easily, I am confident, get another 10 minutes. Does the Senator wish to speak right now?

Mr. BIDEN. Madam President, I would like to do whatever accommodates the Senate.

Mr. REID. Through the Chair to the distinguished Senator from Florida, how is the Senator's time schedule?

Mr. NELSON of Florida. Madam President, I say there is never a dull moment in the life of this Senator from Florida. Since I have learned the ways of comity, accommodation, felicity, I yield to the distinguished Senator from the State of Delaware. In fact, in my remarks about are we better off now than we were 4 years ago, I was going to try to engage my distinguished colleague in a colloquy.

Mr. REID. Madam President, I ask unanimous consent there be 5 additional minutes on both sides for morning business. That will allow the Senator from Delaware to speak for 10 minutes. If my unanimous consent request is granted, that would allow him to begin now.

The ACTING PRESIDENT pro tempore. The Senator will need an additional 10 minutes. All time in excess has expired.

Mr. REID. Our time is gone?

The ACTING PRESIDENT pro tempore. There are 23½ minutes remaining.

Mr. REID. Where did our time go? Did somebody speak?

The ACTING PRESIDENT pro tempore. The senior Senator from Delaware and the junior Senator from Delaware.

Mr. REID. Madam President, I ask unanimous consent for an additional 10 minutes on each side, then.

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

AHMED CHALABI

Mr. BIDEN. Madam President, I thank my friend from Florida who knows much more about what I am going to mention today. He and I worked on what I am going to talk about for some time. And that is—there are reports coming in that the home and offices of Ahmed Chalabi were raided today in Baghdad.

I do not have clear evidence yet as to whether they were raided by the Iraqi government or by the CPA, but both the Senator and I have been incredible skeptics of this administration's reliance on this fellow, Ahmed Chalabi, who has been indicted, tried, convicted, and sentenced in Jordan.

For the last 2 years—although I have nothing personal against Mr. Ahmed Chalabi—I have been urging this administration, particularly the Secretary of Defense, the Vice President, and Mr. Wolfowitz: Do not put our eggs into Mr. Chalabi's basket.

Mr. Chalabi is the President of the Iraqi National Congress. I was so concerned about this that my friend from Nebraska, Senator HAGEL, and I were literally smuggled into northern Iraq about a month before the war began because we wanted to meet with the Barzani and Talibani clients in northern Iraq to determine what their attitude was, first, toward our invasion with Iraq—would they be with us? There were reports that they would have been, but we wanted to find out firsthand.

And B, we wanted to find out whether Ahmed Chalabi spoke for them. The leaders of both those clans said: We want to make it clear that the INC does not speak for us. We did form the INC with him, but he is out for himself, not us.

I could never quite understand the incredible preoccupation of the administration with Mr. Chalabi. I think that reliance has done us great damage in terms of establishing legitimacy.

Today's raid comes on the heels of an announcement earlier this week that the Defense Department belatedly, after well over a year, has cut off the $340,000 monthly payment to the INC, headed by Mr. Chalabi.

Last month, I wrote to the Secretary of State and the Secretary of Defense asking them to explain why we continue to pay Mr. Chalabi a monthly stipend. The action was seen as sort of putting our thumb on the scale—we say we want the Iraqis to decide their outcome, and here we are pouring into one man, an outfit, $340,000 a month.

It is no secret Mr. Chalabi has long been the favorite of the Pentagon civilians and the Vice President, although the CIA, the uniformed military, and the State Department have been adamantly opposed to him.

We recently had a meeting with the Secretary of Defense in a closed session, but I am allowed to say this in public, and I raised the question of funds to Chalabi and the phrase—well, I guess I cannot quote exactly what the phrase was. I cannot quote the Secretary. But the point is there has been a real difficulty in pushing back.

It has been clear for some time our close association with Mr. Chalabi has damaged American interests in Iraq. Chalabi is the best known figure in the Iraqi Governing Council, according to a poll taken. We appointed him. By the way, a poll taken a couple of months ago in Iraq shows that he is not only the best known member of the Governing Council, but he is also the least popular, with a negative rating of over 60 percent.

Chalabi, as my colleagues will recall, was flown in to southern Iraq literally days before the statue of Saddam fell. It was actually during the war; he was flown in to a portion of southern Iraq we had already conquered and passed. He had been flown in without the knowledge of the State Department and other senior officials. I guess he was going to be the triumphant Shi'a

who was going to march through the Shi'a territories heading up to Baghdad, except one thing, nobody liked him and nobody followed him.

I do not know what it took to get the message to this administration that this guy was not helpful but this guy was hurting our legitimacy. At that time, I rose in the Senate and said, what are we doing here? I think my friend from Florida as well, if not here in the Senate, I know in our hearings, said, what are we doing this for? How are we saying we are liberating the Iraqis, we are going to let them choose their government and we are flying in a handpicked guy?

Well, that sort of went south, figuratively speaking. It was clear we were attempting to put him in a place to take over the reins of Baghdad. Toward the end of that year, he organized the militia, which was implicated in instances of looting in Baghdad. The U.S. military wisely ordered the militia to disband, but there were some supporters here saying it is okay for him to set up a militia.

We are trying to disband militias, and we wonder why we have so little legitimacy. This is not Monday-morning quarter-backing. If need be, for the record, I will come back and lay out all the statements we made 2 years ago about Mr. Chalabi, a year ago, 8 months ago, 10 months ago, as recently as a hearing 2 days ago in the Senate.

It has done us serious damage. High-ranking civilians in the Defense Department continue to back Mr. Chalabi, despite numerous warnings about his past dealings.

The King of Jordan made known his country's distaste for Mr. Chalabi. They did not hide it. The Foreign Minister of Jordan came to me personally and said, for God's sake, do not deal with this guy; do you not understand he is going to hurt you?

Mr. Chalabi has been convicted on fraud charges stemming from a failure of the Petra Bank which Chalabi headed. In recent months, Chalabi has been moving closer and closer to the religious elements in Iraq, apparently belying his claims to be a secular leader. His close association with hardliners in Iran, including Ayatollah Khamenei, has been a matter of mystery and some suspicion, but we continued to support him.

The reason for today's raid is not yet clear, although there were reports earlier this week that one of Chalabi's associates, the finance minister, is being investigated by Iraqi police for a scam involving government vehicles. There have been other reports of corruption allegations as well.

I am not making a judgment on that at this moment. We will wait to see. But I am making a judgment, did make a judgment, and will continue to make the judgment that Mr. Chalabi is hurting us, not helping us.

One other point; Mr. Chalabi's guys got in and got hold of a whole lot of intelligence data that was Saddam Hussein's. He refuses to give it to us. He refuses to turn it over to the U.S. military. He will let us see it but not keep it. And this is our guy. It is like our guy in Havana. You know, our guy?

I do not know what it takes. It is like taking a wombat and banging it up the side of the heads of some of these guys and the civilians in the Defense Department.

This guy is bad news for the United States, whether the reason for the raiding of his headquarters and his home relates to corruption or not. We have tarnished our reputation by our association with this man. It is time to begin recouping it by ending our efforts to foist an unpopular leader on Iraqis and supporting a process which will produce more legitimate leaders.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator's time has expired.

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I was going to address the topic, ''Are you safer than you were 4 years ago,'' but while we have the distinguished Senator from Delaware in the Chamber, I want to address a couple of issues with him.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. The bottom line is it is a long time in coming. I hope this means we have listened to the sounds of voices in this administration. I say to my friend, we both know this: We have both tried to help this administration, but it is as though there is a San Andreas fault that runs down the middle of this administration, with two very different views of the world. One is held by Mr. Powell, the State Department, and the uniformed military, and the other being the Vice President, the Secretary of Defense, and Mr. WOLFowitz, who are all fine, honorable, and decent men who have a very different view of the world.

The view of their world which they have been promoting has turned out not to be so accurate. I hope this is evidence of the fact the President is starting to listen to saner voices.

I facetiously said—nobody asked—if you had a baseball team and you had somebody who batted zero and it came time to put in a pinch-hitter, are you going to look at the batting averages? It is time to look at the batting averages, Mr. President. Listen to those folks in your administration. There are some very good ones who have better batting averages, and I hope this is beginning that recognition.

Mr. NELSON of Florida. Mr. President, I want to posit a couple of questions to the distinguished immediate past chairman of the Senate Foreign Relations Committee. How much time do we have remaining?

The PRESIDING OFFICER. The Senator from Florida has 10 minutes.

Is there objection to the unanimous consent request? Without objection, it is so ordered.

The Senator from New York.

Mr. SCHUMER. I did not hear the request.

Mr. NELSON of Florida. I did not have a request.

The PRESIDING OFFICER. The Senator wishes to pose questions to the other side.

Mr. SCHUMER. I apologize. I thought something was said about 10 minutes.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. How much time is allocated to this side on morning business?

The PRESIDING OFFICER. The Democratic side has 22 minutes remaining.

Mr. NELSON of Florida. Is it my understanding this Senator would have 10 minutes?

The PRESIDING OFFICER. Correct.

Mr. NELSON of Florida. Does that give the Senator from New York enough time?

Mr. SCHUMER. Yes.

Mr. NELSON of Florida. All of my speech on ''are you better off now than you were 4 years ago,'' I am going to save for another day. I want to take advantage of one of the most knowledgeable Members of the Senate. In thinking about the question of are you better off now than you were 4 years ago, are you safer now than you were 4 years ago, I have had the privilege of sitting at the knee of the former chairman of the Senate Foreign Relations Committee. He has taught me something about two countries where we better keep a laser eye focused, namely Iran and North Korea.

I ask the distinguished ranking member of the Senate Foreign Relations Committee, as I hold up this chart about suspected nuclear weapons in North Korea, are we safer now than we were 4 years ago?

Mr. BIDEN. Clearly we are not. That is not to suggest you are suggesting it is not good Saddam is gone. I think we are, in a marginal sense, safer because he is gone. But I think the effect of what we have allowed to happen, or what has happened in the rest of the world, has literally put us in more jeopardy.

Mr. NELSON of Florida. Then, Mr. President, indeed this is what the Senator from Delaware has constantly preached. He has been a Johnny-one-note on how we ought to engage with other nations around this world, through diplomacy, to better the protection of the United States.

Is it the impression of the Senator from Delaware we have been dragging our feet with regard to North Korea, before we ever started engaging them in international and one-to-one discussions?

Mr. BIDEN. Mr. President, I say to my friend—I will make two points here. One is, it was not only the Senator from Delaware and Florida, but also the Senator from Indiana, the Republican chairman, who pointed out we made a mistake by dismissing the policy of engagement of the last administration. Even the Secretary of State of the United States of America, Mr. Powell, when Kim Dae Jong of South Korea

came, said we were going to continue engaging the North as Mr. Kim wanted us to and thought we should, as our Japanese friends thought we should, and the President summarily stopped that. I think that was another mistake.

I make another point about Iran. The neoconservative view of why we should have gone into Iraq alone is it would teach a lesson to the other malcontents in the world such as the Iranians. They were going to say, My God, look at the unilateral use of force; we better behave. I point out what my friend knows well and we talked about. Prior to our invasion of Iraq, Iran had a genuine democratic movement—not prowestern, democratic movement. It was the Majlis, their parliament, 195 people. There was a genuine movement.

You had the mullahs and the apparatus and the clerics who controlled security and controlled the intelligence apparatus, afraid of world opinion if they crushed that democratic movement.

What did they do? If, in fact, the neocons are correct, and having 140,000 troops in Iraq was going to teach Iran a lesson, in the midst of our greatest show of force in Iraq, the clerics in Tehran would have been afraid to touch the democratic movement, for fear of world reaction.

Obviously they were not frightened by our show of force. There is no democratic movement left. For instead the clerics crushed it. They disbanded it.

So that is another example of the two most dangerous states for the United States of America today if they spiral out of control—Iran and North Korea. Both present a greater threat to America today than they did 3 years ago.

Mr. NELSON of Florida. Mr. President, I further ask the distinguished former chairman of the Foreign Relations Committee with regard to nuclear weapons and the acquiring of nuclear technology and the ability to make a bomb in Iran, are we safer today than we were 4 years ago?

Mr. BIDEN. As we both know, the details of that are classified, but we are allowed to say, and I give you my opinion, and I believe it would be the consensus of the intelligence community: No. We are not safer.

Mr. NELSON of Florida. Mr. President, I further ask my friend from Delaware, given the fact of what we have heard in the testimony in the Foreign Relations Committee over the last week, and also in the Senate Armed Services Committee; given the fact my friend from Delaware and I have had long conversations about not only do we not need to pull out of Iraq but we need to increase our troop strength in Iraq because the alternative would be unthinkable, for us to turn tail and run and create a vacuum which would be filled by terrorists, which would only give succor and encouragement to the other radical elements in the region, including Iran, does the Senator from Delaware think we are safer now in our international diplomacy results than we were 4 years ago?

Mr. BIDEN. No, we are not. But we could be if the President is willing to not stay the course but change the course. There is an opportunity, if the President begins to listen to the correct voices in his administration, to internationalize this, to bring in the major powers, to actually leave Iraq in December of 2005 with a representative government which will have a positive impact on the region over time. It is still possible, but the President must quickly call a summit meeting of the major powers; quickly get them to agree to sign off on Mr. Brahimi's plan of a new government; quickly get NATO to agree to have a NATO-led multinational force, sanctioned by the United Nations; and quickly, quickly demonstrate he understands the breadth and depth of the damage done by the Abu Ghraib prison scandal, bulldoze that prison down, build a hospital in its place, release those prisoners who should not be there and keep the others in a different environment and open it up. He still can do this. But my friend knows, we can't do it. Only one man, because of the majesty of his office, can do it: the President of the United States. He can do it. I hope he does not squander this last opportunity. I am hopeful he will not.

I believe he understands more now. I hope he begins to listen to the uniform military and Mr. Powell, what they have been counseling along with you and I and Senators LUGAR, HAGEL, MCCAIN, and others all along here. There is still time. But I believe this is the last serious chance he has to get it right by June 30.

Mr. NELSON of Florida. Mr. President, I certainly agree with the Senator from Delaware. I will ask a final question of him. Why does the Senator from Delaware, one of the most knowledgeable in this entire body on international affairs——

Mr. BIDEN. I thank my friend.

Mr. NELSON of Florida. Why, in his opinion, does the administration continue to resist the outreach of building consensus in the international community, to help us with problems such as Iraq and Iran and North Korea? Why is there resistance to that, I ask the Senator from Delaware?

Mr. BIDEN. First of all, I thank the Senator for his compliments that are excessive and not accurate, but I thank him nonetheless. But let me say in a second, I took the time 4 years ago to ask my senior staff to go back and get every major work written by the Straussians, the neocons, I mean it sincerely, and Tony Blinken, former National Security Agency, my chief guy, got together 11 or 12 books, the most seminal volumes written in the last decade by the neoconservatives. These are honorable, bright, serious people—patriotic Americans.

If you read what they say, they mean what they say. What they say is the value of America——

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

Mr. NELSON of Florida. I ask unanimous consent it be charged to our time and that we have 1 additional minute so the Senator can finish his answer.

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

Mr. BIDEN. The bottom line is the neoconservatives believe our power is enhanced by leveraging power. Meaning if we go alone without any help, the malcontents of the world go: Oh, my God, look at them, they don't even listen to the rest of the world. They have this awesome power. We should listen to them.

It might work if we had an army of 12 million and a surplus of $500 billion a year instead of an army that is one-twelfth and a deficit of $500 billion a year. It doesn't work.

Now ideology has run head on into reality. For ideologues, like all honorable people, it is difficult to change. It is a little like me as a practicing Roman Catholic denying the Trinity. You can't deny the Trinity and be a Catholic. It is not possible. They cannot acknowledge they need the international community and stick to a thesis that has been theirs for the last 12 years. That is as quickly, succinctly, and as accurately as I can state it. As Samuel Clemens said: All generalities are false, including this one. I made a bit of a generalization, but I believe an accurate one.

Mr. NELSON of Florida. Mr. President, what we have gotten in a few minutes is a short course of what, in the opinion of this Senator from Delaware, and in the opinion of this Senator from Florida, we need to do: Internationalize the effort, build a consensus, reach out, bring in an international force such as NATO, led by the American military, bring in a senior international diplomat, prepare Iraq for governing itself, and be prepared to be there for the long haul.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

NATIONAL SECURITY

Mr. SCHUMER. Mr. President, I thank my colleague from Florida for his persistence to get to the truth, and my colleague from Delaware, who succinctly described our problem brilliantly in terms of the ideology of the neocons running into reality. I could not agree more.

Ever since I was in college in the late 1960s, I would say to my colleagues, ideologues have bothered me. Anyone who thinks they have a monopoly on truth, and there is only one way to see the world, always gets us into trouble. They can be ideologues of the far left, they can be ideologues of the far right, they can be ideologues just on one issue. America is a place where we all

come together. It is a place of consensus.

I tend to believe in a strong and muscular foreign policy. I think the war on terror is real. But by being so blind to the realities of the world, those who are hawks should be more angry at some of the things that have been done, as my colleague from Delaware outlined, than those who are doves because we are going to need strength and fortitude to continue this war for decades.

I thank both my colleagues. I was privileged to listen to their erudite and illuminating explanation.

Over the last few days, we have been discussing the question: Are we better off than 4 years ago? We have been discussing mainly domestic issues the last few days. Today we are discussing it on national security; are we better off than we were 4 years ago. I guess this means our safety. And there are pluses and minuses.

Certainly in the wake of September 11 and the horrible attacks—and now that the September 11 Commission was in my city yesterday, I am living them all over again and it shakes my insides to remember what happened, to remember going the day after with my colleague, Senator CLINTON and Mayor Guiliani and the Governor, and seeing what happened—certainly we have responded. It is good we have responded. Some do not want to respond or find every response wrong, and you get caught in a quagmire of no response, which would be the worst response, in my opinion.

Having said that, I focus on two areas where we should be a lot better off than we were 4 years ago, where there is a large deficiency. One I will touch on is Iraq. Again, as somebody who supported the President going into Iraq and supported the $87 billion, I am troubled, deeply troubled, by the lack of planning, not just in the prisons but in the whole way the peace has been managed.

No one knows what is going to happen on June 30. We set a June 30 deadline and then we have to fill in the blanks. What do we want to do? How long does it take? The lack of planning has been troubling. It is taking the great military victory we had in Iraq, a justified victory, and turning it into certainly less than a complete success in terms of what happened afterward.

So this inadequate planning, the ''go it alone'' attitude which my colleagues discussed, means we should be a lot better off than we were.

The place I want to focus on in my remaining few minutes is homeland security. It is a truism that has been stated before, but it is not irrelevant still. To win a war, to win a game, you need a good offense and a good defense. My colleagues talked about some of the problems on our team's offense. Let me talk about our problems on our team's defense. We are better off than we were 4 years ago in terms of homeland security. No question. Our guard was down, we know that. But we are not close to where we should be.

What has happened is basically this: While this administration is willing to fully fund the war on terror overseas—and we will get repeated requests for more dollars, which we will support, provided they are planned out and we see what they are doing with the money—we are totally short on homeland security. There are so many areas where we are weak: Port security, rail security, computer technology, the borders, who is coming in and who is not.

What is frustrating is, we can solve all these problems. They are not technologically beyond our reach. We can have foreigners cross our borders free and clear and yet keep bad people out if we have the right computer systems and the right cards that we can give to foreigners before they come in.

We can make our rail and our ports far more secure. We can develop devices that can detect explosives and biological and chemical weapons. We can detect nuclear devices so, God forbid, if one is sent over here, we will get it at the borders.

And why is the pace so slow? I will tell you why. Somehow the priorities in the White House are not to spend money on homeland security. It is to talk about it. It is to do some photo opportunities. Let me share with the American people somebody who has been deeply concerned and ahead of our task force on this side on homeland security. Every time we ask for the dollars that are needed to tighten one area—we say $10 is needed, and they say, We will give you $1.50.

An example, shoulder-held missiles. We know the terrorists have them. God forbid, they smuggle 10 of them into this country, and on a given moment take down a plane in New York, Chicago, Los Angeles, Houston, Seattle, Denver, Boston, Miami. The mayhem. Of course, all the progress we are trying to make on the economy would go right down the drain. No one would fly for 6 months or a year.

We can arm every one of our commercial planes so they can avoid these shoulder-held missiles. Our military planes have them. Air Force One has them. People on their own private jets, wealthy people, have them. We are not doing it on our commercial planes. It is a slow walk.

We said take $8 billion to do the whole thing in 2 years out of the $80 billion we are spending on the missile defense system—which was designed to fight Russia and now Russia, thank God, or the Communist Soviet Union, is no longer our enemy. And they said no. They do not say let's not do it, but they say let's spend $50 million and study it.

We know what is going on. I have spoken to people in the White House who will talk to me privately and say they will not spend a nickel on homeland security. Between the military and the idea of cutting taxes, cutting taxes, you cannot do it all. And it seems to me homeland security should be just as high a priority as helping our troops overseas fight the wars in Iraq and Afghanistan. Yet there is nothing.

It hurts our localities. It is not just New York City, my city, where, obviously, we have a real problem. In Buffalo, Rochester, and smaller places, Watertown, Jamestown, talk to the police and fire departments, and they are trying to do their job. They do not have the dollars to do it. So they stretch and do their best. But it is not being done right.

In place after place after place, we are only inspecting 2 percent of the containers that come in on our ships. Two percent? Do you want there to be a 2-percent chance that we stop someone from smuggling in something terrible? We have the technology to do it. It costs dollars. We cannot do homeland security without the necessary resources to make it happen.

And every single time, the one place where we have done a good job is on air security, to prevent people from smuggling weapons on the planes. Even there we are not doing enough, but we have done better.

I give credit in one other place: In the biological area, we are doing a B. It is not an A—it should be an A—but we are doing B. In almost every one of the other areas we are at C's, D's, and F's.

Who in America would not spend dollars to make us safe so that, God forbid, another September 11 does not happen? No one. But, once again, it is the ideologues in the White House who say they hate spending money on domestic things. It is not just education or health care, it is homeland security.

So we are not as well off, we are not close to as well off as we should be. We can do a lot better.

The bottom line is this: In area after area we should be far more secure than we are. We have taken some steps in every area, but who wants to wake up one morning and say: What if? God forbid, there was a terrorist incident the day before, and we say: What if we had put the detectors on the cranes and ports to avoid nuclear? What if we had made our ports secure?

Mr. President, I hope the administration will change its view on homeland security and spend the dollars that are necessary.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I understand Senator WARNER is on his way to the floor. I thought, in the meantime, I would make a few comments on a very important section of the Defense authorization bill. Then the plan is to recognize Senator GRAHAM of South Carolina. I believe he has an amendment he is working on.

As chairman of the Strategic Subcommittee of the Armed Services Committee, I have the responsibility of overseeing a lot of nuclear programs, one of the most important of which is nuclear cleanup. The Department of Energy is facing the potential collapse of its plan to accelerate risk reduction and cleanup of this Nation's nuclear weapons production legacy. I think we must act responsibly to give the Department the clarification it needs to complete cleanup of the sites in our lifetime.

In 1997, the Rocky Flats cleanup was expected to take until 2045, at a cost of $17.1 billion. Now, working together, the State Government of Colorado and the Department of Energy have developed a plan under which closure is expected in 2006, at a cost of $7.1 billion. Key to our success was the collaboration between the State and the Department of Energy in devising the path forward.

The initiative to accelerate cleanup of the tank farms was proceeding on a similar path in other States. The DOE had been working with each of the various host States to develop strategies for acceleration and closure plans in the States of Washington and Idaho, as well as South Carolina.

We were so very successful in getting cleanup at Rocky Flats in Colorado and saving billions upon billions of dollars for the taxpayers that I was hoping we could put together a plan that would be working well in cleanup efforts in those three States which still have considerable challenges ahead of them.

Last year, the Idaho District Court threw a monkey wrench in those plans. The court interpreted the Nuclear Waste Policy Act to prevent the plans that DOE and the States have agreed on from going forward, by striking down a cornerstone of these plans, which was DOE's approach to classifying the waste in the tanks.

It is not just the accelerated cleanup plans that were called into question, it is also the base plans that the Department of Energy had in place for years. Now in South Carolina and Washington, since the 1980s, it has been clear that the cleanup plans have called for less radioactive tank waste being treated and disposed of onsite. Unless the law is clarified, these plans will not be able to proceed, and it will be impossible to devise new ones.

It is our responsibility in the Congress and as members of the Armed Services Committee to clarify the law so as to allow the plans agreed upon by DOE and the States to proceed. I am convinced if we work together we can achieve the same kind of results on complex issues such as we achieved at Rocky Flats, where we accelerated cleanup by 40 years at Rocky Flats, significantly reducing risks to the public and workers and saving the taxpayers $10 billion.

If we do not get this problem solved at the nuclear sites in Idaho and Washington and South Carolina, what we are going to end up with is a possible increase in additional costs of $86 billion. We simply cannot deal with those kinds of costs. And consider the stress that is in the Armed Services right now. So it means you just do not move forward with cleanup.

The Senators from those three States, I know, have been spending a good deal of time trying to work out an agreement. It is called the WIR issue. In committee, we fenced off $350 million that was set aside to deal with cleanup in those three sites and other parts of the country. We did that so it would not get used in other parts of the bill because if you allow that money to go out, that means there is less money for cleanup. And those of us who have been pushing cleanup for years in the Senate would not want to lose that $350 million because it would be just hanging out there. So we fenced it off.

We adopted an amendment in committee that was proposed by Senator GRAHAM to kind of get us out of committee and give the delegations from those States an opportunity to negotiate and see if they could work out some better provisions than what we left with out of committee. We simply have to work out something. If we cannot get an agreement, maybe we will have to step in to just work with those three States and see what other provisions we can move forward so the cleanup, at least, can move forward.

I am very concerned that we do not stop cleanup. Cleanup is very important. It is something we need to move forward. The plan DOE had in mind was a plan that would have met performance standards that have been specified by the Nuclear Regulatory Commission. They are the ones who have oversight for disposal of low-level waste. And the debate over whether the grout used to stabilize residue should be included in concentration areas is basically a red herring because the bottom line is, what we are doing here meets the requirements of the Nuclear Regulatory Commission.

So I am hopeful that on the floor of the Senate we can get this problem further resolved than what we did in committee.

I understand Senator GRAHAM might have an amendment he wants to bring forward.

Mr. President, I recognize the Senator from South Carolina.

The PRESIDING OFFICER. The Senator cannot recognize other Senators.

The Senator from South Carolina.

AMENDMENT NO. 3170

Mr. GRAHAM of South Carolina. Mr. President, I call up amendment No. 3170.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM] proposes an amendment numbered 3170.

The PRESIDING OFFICER. Without objection, reading of the amendment is dispensed with.

The amendment is as follows:

(Purpose: To provide for the treatment by the Department of Energy of waste material)

Strike section 3119 and insert the following:

SEC. 3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

Mr. GRAHAM of Florida. Mr. President, I ask unanimous consent that Senators ALLARD and CRAPO be added as cosponsors.

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

Mr. GRAHAM of South Carolina. Mr. President, I appreciate Senator ALLARD's comments. I will try to explain this amendment the best I can and as briefly as I can.

Several States played a very key role in winning the cold war by making sure we had a strong and effective nuclear deterrent. South Carolina is one of them, as are Idaho and Washington. They are States that have cold-war legacy materials.

As Senator ALLARD suggested, the Federal Government has been working with these sites for decades now. We spent billions of dollars—billions and billions and billions of dollars—to clean up the cold-war legacy that exists at the Savannah River site and other sites. To be honest with you, we have spent a lot of money and have

done very little cleanup. From a taxpayer point of view, from an environmental point of view, the longer you put this off, the more it costs, and the more damage that can be done.

I have an amendment that would allow $350 million that has been put on the table by the Department of Energy to accelerate cleanup—$350 million has been put on the table in, I think, a very creative fashion to accelerate cleanup at these sites, putting new money on the table.

Here is a little history about what has gone on in terms of how DOE and the sites have been dealing with each other. There are 50-plus tanks of high-level waste in South Carolina as a direct result of winning the cold war, cold war legacy materials. The State of Washington has certainly done its share in helping win the cold war. They have a waste tank problem. Idaho has waste. These three States have a problem. It is now time to create an environment to fix the problem for each State.

Two years ago the State of Idaho entered into a cleanup agreement with the Department of Energy, setting standards that the State of Idaho would agree to help remediate the environment and clean up the sites in Idaho so that we could move forward to have a new day in Idaho.

Washington has been negotiating with the Department of Energy to come up with acceptable standards for cleanup of the waste in tanks and other areas, and there are ongoing negotiations.

South Carolina, for over a year, has been negotiating with the Department of Energy about how to clean up 51 tanks that contain high-level nuclear waste. People in South Carolina want the waste cleaned up. They want it done in an environmentally sound manner, and people in South Carolina want it done sooner rather than later. They are conscious of the cost to the taxpayer.

All three States at some stage have negotiated with the Department of Energy about waste in their particular States and how they can find agreement between the Department of Energy and the State to remediate the site.

I am here to say, thankfully, that the Department of Energy and the State regulators in South Carolina have come up with a plan that will allow these 51 tanks, 2 of which have already been cleaned up, to be cleaned up and to close them, that is environmentally sound, in my opinion.

But it is just not my opinion. The people responsible for the groundwater and the environmental safety of South Carolina, in conjunction with the Governor's office and the Department of Energy, have come up with an agreement to allow these tanks to be closed. The tanks will be cleaned up in a manner that will save $16 billion compared to the old plan, and it will allow the tanks to be closed up 23 years ahead of schedule.

The issue is what is environmentally sound cleanup for the State of South Carolina and any other State that has this legacy material. No. 1, no State should be forced to accept standards that they find unacceptable for the State in terms of their environmental needs. The amendment I have authored and that is part of the base Defense authorization bill ratifies the agreement that South Carolina has achieved with the Department of Energy. Under that agreement, my State regulators tell me that the permitting process of how you close up a tank and when you close up a tank and when a tank can be closed up is a collaborative process between the State and the Department of Energy. They feel they are protected. They have reached an agreement that the last 1.5 inches of waste that is in the bottom of these rather large tanks can be environmentally remediated in a manner safe for South Carolina that would prevent people from unnecessarily risking their lives to go get that last inch and a half and save $16 billion.

What does it mean? It means that some things that were going to go to Yucca Mountain don't have to go because to send them to Yucca Mountain is not environmentally necessary and it is not financially sensible. I hope other States can find a way to get there. I know Washington is talking. I know Idaho had an agreement 2 years ago. All I am asking is that South Carolina be allowed to execute this agreement that is good for South Carolina and the Nation and will move forward and clean up in a sound manner.

The amendment I am offering today doesn't deal with that issue. It deals with the idea that the $350 million to clean up sites in Washington and Idaho, that the money due to Washington and Idaho shall be spent on cleanup, that the Department of Energy cannot require either one of those States to enter into an agreement to get this cleanup money like we have in South Carolina.

My goal has been to do two things: that my State could reach a sound agreement with the Department of Energy to get it ratified for the best interests of South Carolina—and the Nation—and not do anything in South Carolina that is going to harm any other State's ability to negotiate on their terms and to reach an agreement that is sound for their State, and not to change any standards of what would leave South Carolina going to Yucca Mountain or any other repository. So this language requires the Department of Energy to spend money to treat the waste in South Carolina, Idaho, and Washington. It also allows the agreement to be financed in South Carolina.

I know there is some disagreement on this issue. I welcome the debate. That is what the Senate is all about, having two sides of every story. But this is not something we just came into lightly; this is something that has been going on between the Department of Energy and South Carolina for a very long time. Similar processes are going on now in Idaho and Washington.

I am asking this body to join with me to make sure that the Department of Energy spends the money to treat the waste in these three sites, and that we not bind any site by the agreement in South Carolina but we allow the agreement between South Carolina and the Department of Energy to be ratified. Not only is it good for my State, it is good for this Nation if we can clean up these tanks in an environmentally sound manner 23 years ahead of schedule and save $16 billion. That is my hope.

As to what is left behind, the Nuclear Regulatory Commission has looked at the 1.5 inches of material left in the bottom of the tank and has classified it as waste incidental to reprocessing, which is a separate category from high-level waste. The people in South Carolina who regulate our environment and have an obligation to protect the State's groundwater and other environmental obligations have said that this waste that is left can be dealt with in a sound manner, and to get the 1.5 inches totally out would risk people's lives and would take unnecessary time and expense, and that we are going to secure these tanks in a way over which South Carolina would have control.

I didn't come to Washington to tell my State it is not a player in controlling its waste. I hope Washington will allow us who have these sites to work in a sound manner for the benefit of the taxpayers in the State and the Nation and for the environmental needs of our State.

That is what this is about. If we stay the old course and we never allow anybody to do anything other than the most extreme groups out there in terms of what this is all about—and there is politics in every issue, and there should be. There are some people who have an agenda that is not about the groundwater in South Carolina because they don't live there. Some of them are very well motivated, but some of them have an agenda to make cleaning up these sites very difficult, to the point that they don't care what it costs, and they are not trying to get a fair standard. They want to make it take as long as it takes and spend as much money as is necessary and send everything to Yucca Mountain and other repositories because they have an agenda that we don't want to produce any more nuclear power and run out of places to store fuel rods.

I don't want to be part of that agenda. I want to be a part of an agenda that allows each State that has these waste materials to be able to control their destiny, do it in a way that is safe for the State and makes sense for the Nation. That is exactly what we have accomplished.

Idaho and Washington have tried to do the same thing we are doing. They have tried to work with the Department of Energy to get an agreement.

We have been successful. I will never, as a Senator, leverage one of my sister States here to have to agree to something to which they don't want to agree. That is not my goal.

I hope the Senate and the Congress will allow an agreement that has been negotiated to its full term to be approved and to help South Carolina save some money. I am ready to agree on a small time agreement, a large one, or whatever time agreement we can have on this amendment, and have a vote.

Mr. ALLARD. If the Senator from South Carolina will yield, I wish to enter into a colloquy with him to make sure we have laid out this debate.

First, we had a plan by the DOE to expedite cleanups of sites in South Carolina, Washington, and Idaho. Then we had a court case that was litigated in the district court in Idaho. As a result of that, that case is going to definitely be appealed to the Federal court of appeals and may even go as far as the U.S. Supreme Court. In the meantime, we have some cleanup needs in these various States.

As I understand what the Senator's amendment would provide, we are going to keep our $350 million for cycling, which is vital, and it is going to say that the money is going to be available for treatment. But we are not going to have any removal or anything from a contaminated site, except for South Carolina. South Carolina has a plan that has been worked out with the State. The State is very comfortable with it. It is a State-driven plan. We are trying to work out something where we don't create a problem among the various States. We don't want this process to tie up South Carolina and, obviously, we want to see cleanup move ahead in Idaho and Washington.

My concern, as chairman of the subcommittee, is that I don't want to see taxpayer dollars wasted on a huge white elephant out there that will add something like $86 billion to the cleanup budget, which we don't have.

I hope we can work this out, and you are trying to work it out among yourselves. I hope I characterized it properly.

Mr. GRAHAM of South Carolina. The Senator has done a good job characterizing it.

No. 1, this amendment makes the money flow for treatment. There is the $350 million in committee with regard to the argument that there is a fence built around it. If there is any concern about it, this amendment knocks that fence down. The money has to be spent on treatment of waste. There is a lot of waste to be treated. But it also allows for a disposal plan agreed to between South Carolina and DOE.

Other States, the Senator is right, have been negotiating and trying to find a disposal plan. We have just been successful, that is all. Other States have different needs and tank problems. We don't have tanks leaking as they do in Washington. Washington has different needs and concerns. I don't want to wait 23 years and allow these things to leak as we try to clean up the last inch and a half; I think that does more damage than good.

This is where we do agree. DOE, by order 43.5, I think it is, tried to issue an internal order allowing them to unilaterally go into these States and say: Here are the cleanup standards, take it or leave it.

Then you had a court case in Idaho where South Carolina joined as a friend of the court, with an amicus brief, saying, no, we don't want the DOE unilaterally telling a State to take it or leave it. That is why we joined as a friend of the court. We think that is a bad policy.

What we want to do, and what all three States have tried to do, is make sure cleanup occurs in an environmentally sound manner, where the States are involved. What we have been able to do in South Carolina is reach that agreement to have the waste stream cleaned up. What is left in the bottom of the tank we believe we can handle in an environmentally sound manner. Some people don't want us to do that. That is not their agenda to accomplish that. It is my agenda that we accomplish that when and how we can.

We are not going to let the DOE unilaterally decide. That is what this amendment is about. It doesn't allow the Department of Energy to take money away from a site. They have to let the $350 million go. The language in the bill, which Senator ALLARD helped me write and get passed, ensures that South Carolina is protected. Now we need language to ratify that agreement.

Mr. ALLARD. Mr. President, I thank the Senator for his hard work and diligence. Certainly, I am glad he is a member of the Armed Services Committee. It has been a pleasure to work with him on many issues.

I know there is a good deal of frustration on this particular issue. I recognize, in a public way, his dedication and hard work on this issue in trying to clean up this area. It is very important to his State and, hopefully, we can reach some kind of agreement in the ensuing few hours on this debate.

Mr. GRAHAM of South Carolina. I say to Senator ALLARD, he has been a very responsible subcommittee chairman here. This is a big deal for the country, to South Carolina, Idaho, and Washington, and any other State. It is a huge deal. We need to make sure these sites are remediated and the environment of each State is protected and that we get on with it and not give DOE unilateral authority to tell us what to do, and do it in a collaborative way.

We have achieved that in South Carolina. I think it would be inappropriate if Washington or Idaho could reach an agreement between DOE, and Idaho and Washington ran it by the NRC and they say, yes, we like this agreement, we think it protects us, we would like to do it, and then somebody else says no, or they make up a reason of telling us no, which would prevent this from ever happening.

Now, we are going to disagree over some aspects of this. But here is where we do not disagree. The States are going to get the money, whether or not they reach an agreement with DOE. We are not going to let them do it unilaterally. We want to make sure every State has a right to negotiate an agreement on their own terms.

There is nothing in this amendment that is going to prejudice another State in terms of their ability to reach an agreement with DOE on their terms, if they can. I think this is a very important concept.

This is a pivotal time in our effort to clean up these sites. I say to my friend from Nevada and all those folks at Yucca Mountain, if I were in Nevada, I would have the same concerns. I totally understand that. But the rest of us have an obligation, too. I don't think it is fair just to make Nevada be the only one on the receiving end of what is fair and appropriate. If we can, in our individual States, in an environmentally sound manner, deal with some of this waste—an inch and a half—not to send it to Yucca Mountain, not spend $16 billion and take 23 years, I think we have some obligation to be part of the solution.

Let it be said that South Carolina, from the regulator's side—their view is we have reached that agreement. I hope we can pass this amendment.

Mr. ALLARD. Mr. President, I have a letter from the Defense Nuclear Facilities Safety Board to the Secretary of Energy. It addresses the disposal of waste as contemplated in section 3116. The last paragraph reads:

> The Board believes that disposal of wastes as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste. The Board, under its statutory safety oversight mandate, will continue to follow DOE's actions to ensure that activities related to disposal of such waste are conducted safely.

I ask unanimous consent that the letter be printed in the RECORD.

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

Hon. SPENCER ABRAHAM,
Secretary of Energy,
Washington, DC.

DEAR SECRETARY ABRAHAM: This is in response to the letter of May 13, 2004, from the Assistant Secretary for Environmental Management regarding the nuclear safety consequences of proposed Section 3116 of the National Defense Authorization Act for Fiscal Year 2005 (S. 2400). Section 3116 would permit certain radioactive residual materials to remain in a facility (including a tank) at the Savannah River Site.

Safe disposal of radioactive waste is essential to preserving public health and safety. In 1994, the Board issued Recommendation 94–2, Conformance with Safety Standards at Department of Energy Low-Level Nuclear Waste and Disposal Sites, which identified the importance of performance assessments for ensuring safe disposal of radioactive materials in shallow land burial grounds. Department of Energy (DOE) subsequently

issued Order 435.1, Radioactive Waste Management, which defines an acceptable process for conducting the required performance assessments for DOE onsite waste disposal activities.

During the period 1996 to 1997, the DOE at the Savannah River Site undertook the closure of two high level waste tanks. At that time, The Defense Nuclear Facilities Safety Board (Board) closely observed the undertakings and saw no basis to determine that the remaining residual material constituted a danger to the public. The closure process involved transport modeling of the residual material left in the tanks.

When conducted with appropriate rigor, a performance assessment can provide a conservative estimate of potential safety and health consequences. When these estimates meet acceptable safety standards (i.e., DOE Order 435.1 or 10 CFR Part 61 subpart C, Performance Objectives), it is reasonable to conclude that the disposal action adequately protects public health and safety.

The Board believes that disposal of wastes as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste. The Board, under its statutory safety oversight mandate, will continue to follow DOE's actions to ensure that activities related to disposal of such wastes are conducted safely.

Sincerely,

JOHN T. CONWAY,
Chairman.

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

The PRESIDING OFFICER. The Senator from South Carolina, Mr. HOLLINGS, is recognized.

Mr. HOLLINGS. Mr. President, I have not had the opportunity to work with my distinguished colleague. We have worked very closely together on many matters, and I have the highest respect for him. It has really been a pleasure for this Senator to work with him as he has come over to the Senate.

Only yesterday on our way to a vote, I asked him about this issue because I heard about it from our colleague from the State of Washington, Senator CANTWELL. He said he had a letter from the Environmental Control Division of the State of South Carolina.

I thereupon got in touch with the director of the DHEC of South Carolina, the Department of Health and Environmental Control. Mr. Hunter said: Oh, no, we adamantly oppose any kind of reclassification of high-level to low-level.

I said: That is exactly what is being done.

He said: That is not what we understand. We know that Senator GRAHAM has been working with the Department of Energy, and we were led to believe we would have a signoff on it and his amendment would give us any kind of collaborative agreement, as characterized by the distinguished Senator, that was worked out, and we could sign off on it.

On page 2 of the amendment, he refers to subsection A and subsection B—rather subsection A shall not apply to any other material otherwise covered by that subsection that is transported from the State. Then down in section D, in this section, the term ''State'' means the State of South Carolina. So referring to that particular section, what we have is not a preemption, but really the preemption is invalid. That language is, ''any such action may be completed pursuant to the terms of the closure plan of the State-issued permit notwithstanding the final criteria adopted by the rulemaking pursuant to subsection A.''

We had this in the Kentucky case with respect to the supremacy clause. We know this has already been taken to the 6th Circuit Court. That does not protect the State of South Carolina at all. I know my distinguished colleague wants to protect the State of South Carolina, but I think he even knows now that language does not protect the State.

I asked: Where in the world did this all come from anyway?

He said: Oh, Senator, we have been working on it.

We have a brief filed on March 25, a certificate of a brief in the case of the National Resources Defense Council v. Spencer Abraham. We won the case, and it is up on appeal. On this appeal, we have signed that brief, Samuel L. Finckley III, South Carolina Department of Health and Environmental Control—that was just a few weeks ago—stating the Department's position.

I have nothing from the Governor. I know Governor Sanford extremely well. We traveled back and forth for 6 years when he was in Congress. I know the one thing he is known for and that is protecting the environment. Governor Sanford does not approve of this. I understand informally he told my distinguished colleague: If you can work out an agreement that protects the State of South Carolina, then we will go along with it. That is not what is occurring with this amendment.

I have been in this game for 50 years. In 1955, I was the chairman of the Regional Advisory Council on Nuclear Energy. We called it RACNE then. It was a 17-State compact. We had all the dangers of nuclear emissions. We looked for places for permanent storage. At that time, in the early fifties, they said—at that time, I was Lieutenant Governor—they said: Governor, don't worry about it. This Savannah River site we are developing is twofold very dangerous for any kind of permanent storage. One reason is this site is over the Tuscaloosa aquifer water supply that comes down below Aiken County. More than anything else, there is an earthquake fault from Calhoun, Orangeburg, into Aiken County. He said: We are not going to have anything stored here for over 2 years.

Two years became 4, 4 became 8, 8 became 16, 16 became 32, and now it is some 50 years. It has been some 50 years and that problem has yet to be solved.

We worked on the financial end of the problem, and we exacted 1/10th of one cent on a kilowatt of power sold by the various energy companies engaged in nuclear power, and that fund has some $13 billion in it. We are not worried about money. The Department of Energy went around—and that is the case to which I am referring. They ran around and surreptitiously said we are going to reclassify and call it low-level waste, and that means we can save a lot of money and bother and use the money maybe on tax cuts. Don't worry about that fund because the power companies have sued on the particular fund. Otherwise, that fund has been built up, and there is plenty of money.

It is just not cleaning it up. They were trying to empty out the waste and throw some sand and concrete on top of it. We found out in expert hearings back in 1982, when we classified it as high-level waste—the finest of experts came in, and that is where the classification came, and that, my dear friends, is what should occur here.

If there is some reason to reclassify, then let's come before the Environment Committee and the Energy Committee and let's have a hearing as has been provided for by my colleague, the distinguished Congressman from the 5th District, Congressman JOHN SPRATT, whereby on the House side they said, let's refer to the National Academy of Sciences, and we will go about it in a deliberate way, and if the Energy Department wants it reclassified and has some authoritative source that will support their particular position, maybe the Congress itself will reclassify. But this has been classified by us, upheld in the courts, now on appeal, and here they come around in a fancy little surreptitious way on a Defense authorization bill and get the Graham language in the bill that would not hold up in the State legislature where general provision would say it is unconstitutional.

When I heard about this going on, I looked to see if maybe this was unconstitutional, but it is not.

That can be done, and it has been done already. So there has been precedent set for this. I can say categorically, the State in the last 48 hours is in an uproar over this particular measure. They did not know of any kind of special provision that was going to be put on for one State in a Defense authorization bill. They resent it, they resist it, and they have asked me by advertisement and telephone calls to please ''adamantly oppose,'' is the expression they have used.

This is all in the offing. We can see what my colleague has done. He has put language on here so that when the deal is made with the Energy Department where apparently the State still would have a signoff—under the supremacy clause, the Federal Government has got it—and it means absolutely nothing, but it allows them to get the deal and lock the State in, and then we will start all the legal proceedings all over again.

So I implore my colleagues on both sides of the aisle, this is no way to legislate high-level waste in the United States. I have worked with the Department of Energy. We have the facility

down when Secretary Richardson—now the Governor of New Mexico—was in, and I have brought every particular benefit that I could possibly bring to this particular facility, but apparently the contractors want to move ahead and certainly the Department of Energy wants to move ahead and not have to pay out the full sums. If they can get a precedent set for the reclassification in a surreptitious fashion of this kind called low-level waste, then it will set a precedent for the other States and we have an environmental disaster in the offing because we will not be here.

That is about the attitude around here, that if it can be handled in a day's time, then let us forget about the future. This is a highly dangerous procedure. It is wrong for the State of South Carolina. It is wrong for the Nation. It is wrong for the Department of Energy.

I had misgivings when the Secretary of Energy came up for nomination. I remembered very clearly my debate with Spencer Abraham. He wanted to abolish the Department of Energy and abolish the Department of Commerce. I can see him over on that side of the floor right now. We had a debate about that. I was sort of shocked that he would want to be Secretary of a Department that he wanted to abolish, but he is a good fellow. I got along with him, and I said, all right, I will cast a vote and keep my fingers crossed. But this is monkeyshines. We cannot go along with this one.

If they want a reclassification—this is not a money problem, this is a reclassification problem—then let us reclassify it in the orderly fashion in which we made the classification back some 22 years ago in the Congress.

The House of Representatives says let us handle it that way, so let us handle it that way over in the Senate. If we want to give permission to have hearings and then change that law, that is fine business, let us do it in that fashion, but do not put a rider that says this is for the interest of the State of South Carolina because it is not. It is not in the interest of the United States of America.

I do not know how else we can solve this. I know the other States are involved. The Senator from Michigan on the Defense appropriations has been very alert on this particular measure. I am just a Johnny-come-lately to it, but it affects my State, and it affects an area that I have been vitally interested in for over 50 years now. I have worked with every particular facet that one can think of. Never has this Senator been contacted about this deal. I know the Governor, I know his position on the environment, and I know he will not approve of this one.

I can tell my colleagues right now that reclassifying high level as low level, saying that we protect the State of South Carolina when we know the legalistic wording is just that, legalistic wording, has already been found ineffective by the highest court of the land.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Virginia.

ORDER FOR RECESS

Mr. WARNER. I ask unanimous consent that the Senate stand in recess at the hour of 12:45 to accommodate the Secretary of Defense, who will be briefing us, and resume at 2:15.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I think the two managers are very wise, offering the opportunity for everyone to go to hear the Secretary of Defense and the three generals who testified yesterday. It is commendable. It speaks well of the management of the Senate floor because there would be nothing happening here anyway. Everyone needs to go there. So I commend the two managers of this bill.

Has the Senator offered a unanimous consent that we would be out from 12:45 to 2:15?

Mr. WARNER. That is correct. It is essential that Senator LEVIN and I be present with the Secretary.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. WARNER. Mr. President, the distinguished Senator from Michigan and I, together with the distinguished Senator from Nevada, are doing our very best to try to arrange the debate on the pending amendment to accommodate both sides. It is not likely we are going to achieve that in the next few minutes, so I ask unanimous consent the pending unanimous consent request for 12:45 be revised to reflect that the recess start now and terminate at 2:15.

There being no objection, the Senate, at 12:37 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ALEXANDER].

The PRESIDING OFFICER. The Senator from Idaho.

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

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

AMENDMENT NO. 3226 TO AMENDMENT NO. 3170

Mr. CRAPO. Mr. President, I call up amendment No. 3226.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAPO] proposes an amendment numbered 3226 to amendment No. 3170.

Mr. CRAPO. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the first word of the matter proposed to be inserted and insert the following:

3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

(c) This section shall become effective 1 day after enactment.

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

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I came to the floor with the understanding that we are in a moment where we haven't been able to move forward legislatively as far as the schedule goes. I wanted to take a few minutes of leader time to comment on a number of specific issues.

PAUL WELLSTONE MENTAL HEALTH EQUITABLE TREATMENT ACT

Mr. DASCHLE. Yesterday I spoke about the Paul Wellstone Mental Health Equitable Treatment Act. This is a critical piece of health care legislation. One in five Americans today suffers from a mental illness every year. Many are now denied health care they need because of legal discrimination by their health insurers. Such discrimination often takes a terrible toll on people with mental illness, their families, and all of us.

It is estimated that not treating mental illness costs our society $300 billion a year. The Wellstone bill will end that discrimination for all Americans. It is modest, affordable, and urgently needed.

I mentioned yesterday people from across America were coming to Washington on June 10 for a rally in support of mental health parity and the Wellstone bill. The famous Wellstone green bus that Paul loved to campaign on is coming back here for that rally.

It is my hope the majority leader will agree to allow the Senate to vote on the Wellstone bill prior to the June 10 rally. I think it would be a fitting tribute to Paul, and it would make a profound difference for millions of Americans who live with mental illness.

(The remarks of Mr. DASCHLE pertaining to the introduction of S. 2451 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

COMMEMORATION OF MEMORIAL DAY

Mr. DASCHLE. Mr. President, 2 weeks ago, in the Black Hill National Cemetery, SD, SSG Cory Brooks was laid to rest.

A member of the South Dakota National Guard, Sergeant Brooks died in Iraq in late April, and his friends and family gathered to remember his laughter, his joyful spirit, and his love of country.

Among the mourners was a man Cory Brooks had never met, Pat Red Fox.

Mr. Red Fox came as a representative of the Cheyenne River Sioux Tribe.

Six months earlier, the tribe had suffered the loss of PVT Sheldon Hawk Eagle, who died when his Black Hawk helicopter collided with another above Mosul.

The families of Sheldon Hawk Eagle and Cory Brooks had little in common on the surface.

But each passed along the values of service and patriotism to their children.

With pride and sorrow, each said good-bye as their loved ones were shipped overseas. And each prayed that Sheldon and Cory would complete their mission unharmed. Today, they are bound to one another in mourning.

And so to acknowledge this bond, this sacred bond that transcends all apparent differences, the family of Sheldon Hawk Eagle sent Pat Red Fox to Cory Brooks' funeral with one of the most valued gifts in the Sioux tradition—a star quilt bearing the colors of our Nation, and the Sioux symbol representing the immortality of the soul and the connection between the living and the dead.

During the upcoming recess, our Nation will commemorate Memorial Day with a special unity, immediacy, and poignancy.

As we honor those who gave their lives for their country in generations past, young American soldiers today face mortal danger.

As we offer thanks for the sacrifice of families who suffered the loss of loved ones, hundreds of American families are today mourning the deaths of their children, spouses, and parents.

For them, the cost of war and the price of freedom is not a thing of memory. It is the inescapable fact of their lives. And their pain and shock reverberate throughout American communities.

All Americans stand together in awe of the courage of our soldiers, and in gratitude for their sacrifice.

But the urgency of this Memorial Day also serves to amplify and clarify our understanding of America's history.

Within the sacrifices of today's soldiers, we see a clear reflection of the sacrifice of those who came before.

Like our soldiers today, our veterans, too, left families behind. They, too, woke up to uncertain dangers. They, too, saw their friends fall. Yet, knowing both their risks and their responsibilities, they, too, performed their duty each day. And many gave their lives.

Forty years ago, President Kennedy noted that no nation ''in the history of the world has buried its soldiers farther from its native soil than we Americans—or closer to the towns in which they grew up.''

At our proudest moments, the American people have sent our sons and daughters across the globe to fight for freedom.

Today, the honor of defending those who cannot defend themselves is carried forward by young American soldiers. But their service is doubled, for in addition to offering a chance for freedom to the Iraqi people, they are renewing our understanding of the cost of war, the price of freedom, and the immeasurable depths of American valor.

Seven hundred and ninety one Americans have lost their lives in Iraq. Another 122 have died in Afghanistan during the course of Operation Enduring Freedom.

As was true in World War I, World War II, and the Vietnam War, South Dakotans have volunteered for service in disproportionate numbers. And as before, South Dakota has borne a disproportionate share of loss. Seven of South Dakota's sons have lost their lives in this conflict:

CWO Hans GOO-Keye-sen, of Lead; PFC Michael DOOL, of Nemo; CWO Scott Saboe, of Willow Lake; CPT Chris SOUL-zer, of Sturgis; SP Dennis Morgan, of Winner; PFC Sheldon Hawk Eagle, of Eagle Butte; SSG Cory Brooks, of Philip.

For them and for the hundreds more who have lost their lives in service to their country, America is united in sorrow, and in debt for their sacrifice.

But this sorrow, and this debt, is not unique to us. In many ways, it has been the central experience of each and every American generation.

My father was an Army sergeant in World War II. He landed on the beaches of Normandy with the 6th Armored Division on ''D Plus 1''—June 7, 1944.

He was injured during the landing, and, as he was recovering, one of his duties was sending word back to the States of those who had died so their loved ones could be notified.

That experience left my father with a profound sense of respect for the sacrifices that freedom sometimes demands, and he passed that lesson on to his four sons.

When I was a boy, every Memorial Day, my parents would take my brothers and me to the cemetery to pay our respects to the heroes who lie buried there.

Later in life, when I was in the service, I learned the lesson in a deeper way, as friends of mine lost their lives in Vietnam.

The men whose names my father sent home from Normandy, the men whose names are carved into The Wall in Washington, and all of the other noble heroes we honor gave their lives to preserve our freedom.

We are in their debt—today and every day. Now a new generation of Americans is called to battle—in Iraq, Afghanistan, and many other areas around the world. And once again, they are answering the call, and making us proud.

In 1868, just three years after the end of the bloodiest conflict our Nation has ever known, General James Garfield led the first observance of the holiday we now know as Memorial Day.

Standing among the graves of Union and Confederate soldiers alike, he said:

> If silence is ever golden, it must be here beside the graves of fifteen thousand men whose lives were more significant than speech and whose death was a poem the music of which can never be sung.
>
> We do not know one promise these men made, one pledge they gave, one word they spoke; but we do know they summed up and perfected, by one supreme act, the highest virtues of men and citizens.
>
> For love of country they accepted death, and thus resolved all doubts, and made immortal their patriotism and virtue.

No words, no ceremony could add to the honor they won in their lives.

So this year, with the heroism of our soldiers so radiant, we must acknowledge that Memorial Day is not commemorated for the sake of those who gave their lives, but for our own.

We remember their courage because within it lie the seeds of our own courage.

We remember their sacrifice, because it shows us both the cost, and the value, of freedom.

Memorial Day is not merely a time to remember those who died in uniform, but a time for each of us to rededicate ourselves to trying in our own way, in our own lives, to meet the the example of patriotism set by all the men and women who defend our Nation.

It is a time to rededicate ourselves to carrying forward the legacy that has been passed down from one generation to the next.

As with the families of Sheldon Hawk Eagle and Cory Brooks, it is a legacy that binds together every American.

It transcends borders and generations and all political divisions.

Above all else, it is this shared legacy, and the great gifts that it has conferred upon our Nation, that we reaffirm on Memorial Day.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

RULE OF LAW

Mr. REID. Mr. President, the core concept which has guided this Nation for 200 years has been the rule of law. That is why we have a Constitution. That is why we have a judiciary. That is why we have a national legislature, to make and revise the laws which rule our conduct, one and all, no exceptions. Therefore, no one, not the mightiest in his mansion, not the lowest begger on the street, is above, beneath, or outside the law.

If a law is outmoded, has lost its utility, if it is obsolete, it is not the place of any citizen, no matter how high or how low, to decide it must no longer be obeyed. That decision rests only with the Congress or with an interpretation by the Federal courts. That is the only place that decision can rest.

Yet I have in front of me a memorandum written in January of 2002 by Alberto Gonzales, the White House counsel to President Bush, telling the President of the United States that the Third Geneva Convention of 1949 is obsolete, that the War Crimes Act, which we passed in 1995 making it a felony to commit a grave breach of that Convention, is inapplicable, and that as a result, prisoners captured on the battlefield can be questioned using means that would violate the Third Geneva Convention.

I am not talking about members of al-Qaida. The Gonzales memo specifically discusses members of the Taliban. It makes an extremely questionable argument that the Taliban are not prisoners of war because they were not the government of a state.

That argument is most disturbing. In the first place, it represents precisely the kind of arguments which the drafters of the Third Geneva Convention tried to defeat, drafters who included representatives of the United States. Those drafters repeatedly expressed their concern that the German Government, the Nazi government during World War II, used trumped-up legalisms to avoid applying the 1929 POW Convention to captured prisoners. One of those arguments was that Polish prisoners were unprotected because, according to the Nazis, Poland had ceased to exist as a state. That is precisely why articles 4 and 5 of the current Convention are written in such broad language with such inclusive presumptions.

I am equally disturbed by Mr. Gonzales's argument that because the Taliban were generally unrecognized as a legal government, they should not be afforded the protection required for soldiers of a de facto government. What particularly bothers me about that is the statement issued by the White House late in 2001 that the United States recognized that the Taliban was a de facto government of Afghanistan. You cannot have it both ways. Did Mr. Gonzales forget that statement? Did he ignore it or did he just not care that it squarely contradicted his memo of January 25, 2002, made just days later?

When he sent that memo to the President, over the objections of the Secretary of State, Mr. Gonzales and everyone else involved in its drafting and preparation sowed a bitter harvest. They sowed the seeds of solitary confinement, of sensory deprivation, of physical mistreatment, of violations of religious right, of legal rights, of rights against intimidations and threats and torture—all grave breaches of the Third Geneva Convention. They sowed the wind, and now we are reaping their whirlwind caused by that memorandum from the legal representative of the President of the United States.

AMENDMENT NO. 3170

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I rise to speak on the Graham amendment.

It is almost unbelievable that we are on the DOD authorization bill, a very important bill that we need to discuss and move forward, as it supports a lot of important things for our troops, and our military strategy. But somehow the other side of the aisle and the Department of Energy think they can sneak in language to this Defense authorization bill that would allow the reclassification of hazardous, high-level nuclear waste and basically call it incidental waste. Basically it would reclassify nuclear waste that is in existing tanks in my State, in South Carolina, in Idaho, and in New York, and basically say that waste can be covered over with cement, with sand, and could be grouted. Basically, it says we can take high-level nuclear waste and grout it—grout it.

For most Americans, grout is something they see in their bathroom, not something they do with nuclear waste. Yet this is what we have before us in the underlying Department of Defense authorization bill. It is a shame. It is a shame that this body would allow such a significant change, really a change to the Nuclear Waste Policy Act on how nuclear waste is classified in this country, without public debate, without a public vote, without a public hearing, even without legislation discussing that change. Yet the other side of the aisle thinks they can come at 1 o'clock in the afternoon and offer an amendment to change 30 years of policy, and that in the blink of an eye, they are going to get a vote on changing that policy without discussion.

The underlying bill is flawed. As far as I am concerned, it has made the whole DOD bill radioactive itself. Why do they play politics on an issue that is so important to our country? Why do they try to sneak through a change that ought to be debated in public in full daylight, with people weighing in on what is appropriate science?

Mr. President, if I sound as if I am a little upset about this underlying bill and the fact that it has this sneak attack language to reclassify high-level nuclear waste, you are right.

Fifty-three million gallons of nuclear waste reside at the Hanford nuclear reservation in the State of Washington.

This Senator wants to see that waste cleaned up. I do not believe that can happen by pouring cement on top of it and putting sand in those tanks and all of a sudden now say we have cleaned up waste. Nowhere has that policy been promulgated as sound science.

This is a picture of the Hanford Nuclear Reservation and one of its reactors in proximity to the Columbia River. My constituents in Washington State already know the 53 million-gallon tanks of nuclear waste are leaking, and there are toxic plumes that have already gained access to the Columbia River. So, yes, Washington State wants the tanks to be cleaned up. They want the material that has been part of the nuclear mission of this country removed from the tanks, the tanks cleaned up, the ground cleaned up, the plumes removed to the best possible extent, in order for us to go on with our mission and our life at the Hanford Reservation.

What we do not want is somebody to come in and say all of a sudden these underground storage tanks that exist below ground should be taken and cement poured on top of them and that means they are cleaned up.

It is amazing to me because when I think about the Hanford project and what I think it meant to our country, these were men and women in 1943 who started on a mission to produce a product that would help us win the war. In less than 2 years, they had the world's first reactor going and they produced plutonium that provided a very valuable tool for our country. Those men and women did their job.

Now we have been left with the aftermath of that and we should handle it in the same professional way those men and women did, by cleaning up the waste and recognizing that these tanks are leaking and they are causing hazard to the environment. The appropriate way to clean them up is by making sure the material is removed and that that material is placed in a more permanent storage. That is exactly what science has been saying. Yet my colleagues believe that in this underlying bill, the Defense authorization, it

was somehow appropriate, in a closed-door session, with no public, no public testimony, no public witness to this language, no bill saying they were going to put this in the DOD bill, they can now sneak through this policy.

Well, thank God some people in America are paying attention because they are starting to respond. I will share some of that with my colleagues. For example, the Idaho Falls Post Register basically said those on the other side are choosing the wrong side.

What happened in this case is the Department of Energy—maybe I should stop for a second and give some of my colleagues a little reminder of how we got to this point, because everybody thinks reclassification of waste is something that belongs to the States. It does not belong to the States. It belongs in the Nuclear Waste Policy Act that was passed in 1982. That was passed by Congress, after much debate. It went through the Energy and Natural Resources Committee and the EPW Committee. They had a discussion about what nuclear waste cleanup should be. They have the authority.

So when the Department of Energy recently said ''let us accelerate the cleanup of waste, let us do it faster, we have an idea, instead of removing all of the material from these tanks we can just pour cement and sand on top of it and somehow we can get this done quicker and cheaper''—I am sure everybody in America agrees that pouring sand and cement on top of the waste that is there instead of cleaning it up is cheaper. But no one says it is safer and no one says it satisfies current law in the Nuclear Waste Policy Act.

That is why when the Department of Energy tried to use an order basically reclassifying waste, saying, ''let us try this accelerated cleanup, let us try this notion of grouting and see if it, in fact, is the way we can do this.'' The courts have said the Department of Energy does not have that authority to reclassify the waste; the definition lies within the Nuclear Waste Policy Act, and DOE was not consistent with that act.

So what did the Department of Energy do when they lost that case? Yes, it is on appeal. They can go through the appeal process. But instead of coming to Congress and asking for public hearings on changing the Nuclear Waste Policy Act, saying, ''listen, we think some waste that ought to be able to be reclassified,'' they have snuck language into the DOD authorizing bill.

Let me be clear again. Sneaking in language is having a closed-door session, without public debate, without public scrutiny, without a hearing on the change in this reclassification.

Now all of a sudden we are presented with this bill and people think we ought to move ahead without removing this radioactive language that is in the DOD bill, which I say has no business being here. If people want to debate this policy, let us debate it in the broad daylight of a hearing and discuss what hazardous waste is and the changes to the Nuclear Waste Policy Act that might be appropriate.

I guarantee, if somebody wants to change the Nuclear Waste Policy Act, that bill would not go to the Senate Armed Services Committee. It would be a policy that was debated by the Energy and Natural Resources Committee and by the EPW Committee. It is not the Armed Services Committee's jurisdiction to change the Nuclear Waste Policy Act. This underlying bill basically will put in place language contradictory to the Nuclear Waste Policy Act.

What are newspapers around America saying about this? Basically, the Idaho Falls Post Register says, ''if the courts are uncooperative, try blackmail. That is what DOE is doing by holding $350 million in cleanup funds, including $95 million for Idaho's national engineering and environmental laboratory.

They go on to say, ''if blackmail fails, start cutting deals in secret with Congress. DOE found an ally and behind closed doors in the Senate Armed Services Committee won a provision in the Defense authorization bill that would allow DOE to reclassify the high-level Savannah River waste.''

I think they said it best when they said the view from Boise is more accurate, and that Kempthorne, the Governor, believes the measure ''would wreck Idaho's position in the court by setting a precedent in short order, it would undermine the State's landmark decision.''

It goes on to say: ''Why would you reward DOE for its heavyhandedness against the State by passing something in the committee with the thinnest of claims to jurisdiction? If the Nuclear Waste Policy Act needs revision, do so in the open. Hold hearings. Conduct them in germane committees. What is going on here is not science, it is bare-knuckle politics.'' That is from the Idaho paper.

The Seattle Post-Intelligencer said a similar thing: ''The Senate should halt the nuclear waste plan.'' Why? Because the bill gives the DOE the reclassification authority and withholds funds, and that this is a scheme to reclassify, hoping the States will cave in. It is not a good idea.

What did the Idaho Statesman say? Well, basically in a headline that said ''State Cleanup Faces An All or All Proposition,'' it said: ''We expect the Feds to clean up and move out all the highly radioactive liquid waste now stored in Idaho. No haggling, no shortcuts. Our political leaders need to hold firm even when politicians in other States are willing to cut deals.''

What did the Spokesman Review in my State say? I thought the Spokesman Review had an interesting take. They said: ''For example, let us say the next step would be to persuade the affected parties and the public there is scientific consensus on this matter. Without that, there will be no hope of political consensus. The U.S. Department of Energy believes leaving some waste behind is a good idea but is trying to slip this in as a seismic policy shift in the Defense authorization bill without comment or without congressional debate.''

I think these newspapers have it right. In fact, another newspaper in my State, the Tacoma News Tribune, said: ''It was bad enough that the U.S. Department of Energy was trying to carry out illegal, quick, and dirty disposal of the Nation's most dangerous radioactive waste. Now a Senate committee is helping the Department circumvent the law.''

I think these newspapers are on to it. The Buffalo News, in their editorial, called it ''A Dangerous Game.''

The Federal Department of Energy is trying to use administrative sleight of hand to avoid its responsibilities in the cleanup of nuclear waste at West Valley and several other sites. DOD is trying to downgrade the threat of nuclear waste altered in this bill. The department argues that the waste should be classified as high level based only on how it originated, not on what they are. But what they are still is bad. It's still radioactive and it's still a Federal responsibility.

That is from the Buffalo News.

Mr. President, I ask unanimous consent to have all those editorials printed in the RECORD.

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

[From the Buffalo News, May 10, 2004]

DANGEROUS GAMES—FEDERAL EFFORT TO BURY NUCLEAR WASTES AT WEST VALLEY IS UNCONSCIONABLE

The federal Department of Energy is trying to use administrative sleight of hand to avoid its responsibility in the cleanup of nuclear waste sites at West Valley and several other states.

This contemptible effort involves downgrading the threat of nuclear waste, thereby allowing the government to bury that dangerous material at West Valley and other sites instead of shipping it to a permanent repository as called for in a 1982 law.

Fortunately, New York Sens. Charles E. Schumer and Hillary Rodham Clinton recognized this downgrading for what it was, a threat to West Valley and surrounding areas from the possibility of future leakage of this radioactive material. After they protested the legislation, Sen. Lindsey Graham, a Republican from south Carolina who introduced the bill that would have allowed the DOE to downgrade the threat of nuclear wastes, altered his bill. It now will apply only to the waste remediation project at Savannah River, S.C.

But that doesn't remove the danger. The House, essentially led by Republican Majority Leader Tom DeLay, still has to consider the DOE legislation. That cannot be a comforting thought to residents living near West Valley.

The department argues that the wastes should be classified as ''high-level'' based only on how they originated, not what they are. But what they are is still bad, still radioactive and still a federal responsibility.

Decades of expensive cleanup progress have improved safety at West Valley, but the work is far from over. The radioactive liquid wastes from a nuclear fuels reprocessing effort have been solidified into safe glass logs, which were supposed to be stored elsewhere. But the anticipated long-term storage facility at Yucca Flats is years from completion.

Tanks and residual wastes still remain at West Valley, and an underground plume of water is contaminated with radioactive strontium. Covering wastes with concrete won't help that.

The 600,000 gallons of West Valley wastes have their counterpart in nuclear weapons production wastes at other sites—53 million gallons at Hanford on the Washington-Oregon border, 34 million gallons at Savannah River near Aiken, S.C., and 900,000 gallons at the Idaho National Engineering and Environmental Laboratory.

West Valley is the only site where the state shares the cost of cleanup.

Those costs may run into the tens of billions of dollars over decades, but the mess remains a federal issue. At West Valley, the risk includes not only the site's land but water drainage that flows into Buttermilk Creek, Cattaraugus Creek and Lake Erie. Trace amounts of that radioactivity have been tracked as far as Buffalo.

The DOE also is threatening to withhold $350 million in cleanup money from military-related cleanup efforts unless it gets a change in the definition of what constitutes high-level waste. That bit of weaseling does the department no credit. These sites were created by the federal government, and the federal government should not be allowed to walk away from them.

Acceptable cleanup at West Valley involves removal of all wastes and dismantling and removal of the contaminated structures that were used to process and store them. The government cannot be allowed to escape that responsibility through administrative trickery.

If the federal government truly could end a problem by renaming it, we'd already be at ''mission accomplished'' in Iraq.

[From the Idaho Falls Post Register, May 19, 2004]

CHOOSING THE WRONG SIDE

Why would Idaho's two U.S. senators support the Department of Energy against their own state?

You'll have to ask them.

A big vote is coming up—possibly today or tomorrow—in the Senate.

Idaho has a lot at stake.

The outcome is expected to be close.

Idaho Gov. Dirk Kempthorne is on the right side.

Sens. Larry Craig and Mike Crapo intend to be on the wrong side.

At issue is nearly 1 million gallons of high-level radioactive wastes stored in Idaho. The Hanford nuclear site in Washington has 53 million gallons. Savannah River in South Carolina had 37 million gallons.

Federal law says that waste may be collected and stored in a national repository. DOE wants to reclassify it, leave some material behind and save a few bucks.

But it can't get a judge to go along. Last year, U.S. District Judge Lynn Winmill ruled DOE couldn't do that on its own. DOE appealed.

If the courts are uncooperative, try blackmail. DOE is withholding $350 million in cleanup funds—including about $95 million for the Idaho National Engineering and Environmental Laboratory.

And if blackmail fails, start cutting deals—in secret—with Congress. DOE found an ally in freshman Sen. Lindsey Graham, R–S.C. Behind closed doors in the Senate Armed Services Committee last week, Graham won a provision in the Defense authorization Bill that would allow DOE to reclassify high-level wastes at Savannah River. Another provision allows DOE to continue holding cleanup funds hostage in Washington and Idaho until the accede to DOE's demands.

Fortunately, the House version contains none of this mischief. So even if the Senate goes along, there's still hope a conference committee will reject it.

Craig and Crapo say they're willing to defer to Graham on something they believe affects only his state—as long as the cleanup funds are kicked loose. They also believe Graham will be appreciative down the road when Idaho needs his help.

The view from Boise is the more accurate one, however. Kempthorne believes the Graham measure could wreck Idaho's position in the courts by setting a precedent. In short order, it would undermine the state's landmark 1995 settlement with DOE, which requires the agency to clean up the INEEL and ship wastes out of the state.

That's not to say Idaho isn't willing to negotiate. But no governor can surrender unilaterally to DOE demands without unraveling the 8-year-old truce that ended the statewide battle over the INEEL, its future and the waste issue that has raged for more than a decade.

Politically, two states are weaker than three. If South Carolina cuts a private deal on waste, Washington and Idaho are left to fight on their own.

And why would you reward DOE for its heavy-handedness against the states by passing something in a committee with the thinnest of claims to jurisdiction? If the Nuclear Waste Policy Act needs revision, do so in the open. Hold hearings and conduct them in the germane committees—Energy or Environment and Public Works.

What's going on there isn't science. It's bare-knuckle politics.

So as early as today, Sen. Maria Cantwell, D–Wash., will offer a motion to strip Graham's language from the defense bill. She has the support of Graham's colleague, Sen. Ernest Hollings, D–S.C. But it's going to be close, and the Idaho delegation could make the difference.

Does Graham may have more to offer Craig and Crapo than Idaho voters?

Maybe. Craig is in the second year of a six-year term. Crapo just got re-elected to a second term. Although the election isn't until November, Idaho Democrats have forfeited the race.

Just the same, both Idaho senators ought to reconsider.

[From the Seattle Post-Intelligencer, May 18, 2004]

SENATE SHOULD HALT NUCLEAR WASTE PLAN

Senators should halt the Bush administration's Department of Energy's attempts to boss everyone around on nuclear waste policy and end run the federal courts. The administration's bullying tactics should be met with a firm refusal to submit.

The DOE has a responsibility to clean up the heavily contaminated radioactive waste in tanks at Hanford and several other sites around the country. A federal judge already has overruled the department's attempts to reclassify the waste in order to save money and leave it at the sites.

Legitimately, Energy has filed an appeal. But is has shown horrid judgment with attempts to dictate changes in federal law to evade its responsibility, blackmail states into accepting the waste and free itself of state controls.

Sen. Lindsey Graham, R–S.C., has put language into a defense authorization bill to give the department much of what it wants. The bill would authorize reclassification of the waste in his state and let DOE withhold $350 million in cleanup money for Hanford and other sites until their states cave in to reclassification schemes.

Sen. Maria Cantwell, D-Wash., is leading a fight against the plan. Tank waste at Hanford threatens to pollute the Columbia River. Environmental groups rightly complain about rewriting the waste law in a defense bill without public hearings.

The Senate should strip Graham's amendment from the bill. The Energy Department needs to clean up nuclear waste fully, not evade public accountability.

[From the Idaho Statesman, May 11, 2004]

STATE CLEANUP FACES ALL-OR-ALL PROPOSITION

Idaho's political leaders need to hold the Department of Energy to a simple standard.

We expect the feds to clean up and move out all the highly radioactive liquid waste now stored in Idaho. No haggling and no shortcuts. Our political leaders need to hold firm even when politicians in other states are willing to cut deals.

About 900,000 gallons of high-level radioactive waste sit in underground tanks in the Eastern Idaho desert, above an aquifer that provides water for many Idaho farms and communities.

After decades of nuclear defense work in states like Idaho, it's time for the Energy Department to fully clean up the sites that helped produce the implements of the Cold War.

Unfortunately, the Energy Department has been more interested in cutting corners than in cleaning up. The agency wants to clean up most of the waste but leave a fraction of it in the tanks, sealed with grout.

The Energy Department has been trying to foist off less-than-clean cleanup as adequate and cost-effective. B. Lynn Winmill, an Idaho federal judge, ruled last year that the DOE plan violated federal law. Since then, the Energy Department has pushed the idea in Congress, and it may have a taker. With the help of Sen. Lindsey Graham, R–S.C., the Energy Department now has language in a defense bill limiting its cleanup obligations in South Carolina, where 34 million gallons of waste are stored at its Savannah River Plant.

The language covers only South Carolina, not Idaho. Still, it could set an alarming precedent, and could put pressure on Idaho's political leaders to cave to the federal government.

In Idaho, cleanup should be non-negotiable. Idaho has the law and Winmill on its side and has in hand a binding agreement with the feds mandating the tank cleanup. Then-Gov. Phil Batt reached a comprehensive waste cleanup deal in 1995, and Idaho voters ratified it a year later.

The deal gives Idaho leverage—but only if state officials and the Idaho delegation hold the feds to every word of it. Especially the word ''all.''

[From the Tacoma News Tribune, May 10, 2004]

FIX ENERGY DEPARTMENT, NOT THE LAW IT'S BREAKING

It was bad enough that the U.S. Department of Energy was trying to carry out an illegal quick-and-dirty ''disposal'' of some of the nation's most dangerous radioactive waste. Now a U.S. Senate committee is helping the department circumvent the law.

The law in question is the Nuclear Waste Policy Act, which Congress passed in 1982. Among other things, this act requires the federal government to safely dispose of high-level nuclear waste in a deep underground repository. The law quite explicitly specifies that the radioactive byproducts of plutonium creation—a category of waste all-too-abundant at the Hanford Nuclear Reservation—must be buried in such a repository.

Despite what the law says, the Energy Department has other plans. Hanford's high-

level wastes are presently being stored on site in steel-walled tanks, many of which have leaked dangerous radioisotopes into the surrounding soils. The department does intent to encase most of the wastes in these tanks in glass cylinders, which will be buried. But it also wants to leave significant quantities on site. Naturally, the idea is to save money.

The Nuclear Waste Policy Act, however, doesn't say, ''Bury what's convenient, and don't spend too much trying to get the rest.'' It says, ''Bury it, bury it all, and bury it deep.'' A federal judge in Boise last year called the Energy Department on its scheme, ruling that the leave-it-in-place plan would violate the law.

Laws, however, can be altered. That is what Sen. Linsey Graham (R-S.C.) is now trying to do, so far with success. At this behest, the Senate Armed Services Committee last week amended a defense bill with a measure that partially exempts the Energy Department from the requirement that all high-level waste be sent to a repository.

The amendment applies only to South Carolina wastes, but it's a scary precedent for this state. The Energy Department has already made clear its desire for an incomplete cleanup at Hanford, the nuclear contamination capital of America.

If Congress attempts to relax the disposal standards in Washington as well, the state had better be given consultation rights and veto power over whatever plan the Energy Department comes up with. The department simply cannot be trusted to act in the interest of Washington and its environment.

As for Graham, his constituents in South Carolina ought to be giving him an earful about the prospect of living in perpetuity with the world's most lethal garbage.

[From the Spokesman-Review.com, May 9, 2004]

DEBATE NEEDED ON NUCLEAR WASTE

For the sake of argument, let's say leaving some lethal waste buried at nuclear weapons sites is a good idea, because the cost benefits outweigh the risks.

The next step would be to persuade affected parties and the public there is a scientific consensus on the matter. Without that, there would be no hope of a political consensus. The U.S. Department of Energy believes that leaving some waste behind is a good idea, but it is trying to slip this seismic policy shift into a defense authorization bill, without public comment or congressional debate.

Last year, DOE tried to get House-Senate conferees on an already passed energy bill to accept this change. But that bill has bogged down. Now it has found an opening in a bill that otherwise has nothing to do with energy matters. U.S. Sen. Lindsay Graham, R-S.C., is pushing the change, but according to a Seattle Post-Intelligencer article, a deputy assistant energy secretary is listed as ''author'' in supporting documents.

In effects, Graham's measure would exempt DOE from the 1982 Nuclear Waste Policy Act, allowing the agency to solely determine when a site has been ''cleaned.'' This is just the latest DOE maneuver to shut states out of the decision-making process, which is in direct conflict with the 1989 Tri-Party Agreement.

DOE has been trying to reclassify some ''high-level'' waste as ''low level'' for two years, but the states, Congress and the courts have said no. A federal judge's ruling sent DOE back to Congress to get the law changed. Such a change would have enormous implications for sites such as the Hanford Nuclear Reservation and the Idaho National Engineering and Environmental Laboratory, both of which are near major rivers. DOE previously announced a plan that would redefine as ''low level'' 53 million gallons of waste at Hanford and 900,000 gallons at INEEL.

Idaho and Washington are against reclassifying the waste. Said Sen. Maria Cantwell of Washington: ''Trying to rename high-level nuclear waste doesn't change the fact that it is still dangerous, toxic, radioactive sludge that needs to be cleaned up.''

Critics say another danger in allowing such waste to be reclassified and permanently buried where it sits is that it paves the way for the importation of any other waste DOE deems to be ''low level.'' Hanford could be a dumping ground for another state's waste. The National Academy of Sciences has concluded that the best approach is to bury nuclear waste deep underground. Since that conclusion, Yucca Mountain in Nevada has been chosen as the national repository.

Without a scientific or political consensus, it is unconscionable for DOE to seek such a major change on such an important matter, especially in the absence of an open debate. The agency needs to stop the repeated end-runs and make a good-faith effort to involve all affected parties if it sees the need for change.

Ms. CANTWELL. Mr. President, let's go back for a second to what this issue is as it relates to the Nuclear Waste Policy Act and what the underlying change in this bill does. That is the question at hand.

My colleagues on the other side of the aisle hope we can get rid of this issue in one afternoon—again, without public debate, without the scrutiny of changing the definition of highly radioactive waste. They think we should just pass what is in the underlying bill. It has only seen the daylight because of the objections of myself and other colleagues and the scrutiny of the press. That is what has gotten them now to offer the amendment on the floor. The amendment on the floor is not sufficient to strike the language relating to the reclassification of waste.

So what is the issue? In 1982, when we passed the Nuclear Waste Policy Act—I wasn't here but other Members were—basically we came up with a definition. We said:

Highly radioactive material resulting from the processing of spent nuclear fuel, including the liquid waste produced in the reprocessing. . . .

That is what this reactor did for us in World War II. It basically processed spent nuclear fuel and that liquid waste was then stored in tanks still at Hanford.

That the solid material derived from such waste that contains fission products in sufficient concentrations. . . .

So that is what we said high-level radioactive waste was. We went on to add to the definition:

Highly radioactive material that the Commission says is consistent with the law requires permanent isolation.

That is what we said in 1982, that the spent fuel from these reactors required permanent isolation. That is what the current law says. The current law says spent fuel requires permanent isolation. That means you have to remove it from the tanks that are there, because the tanks are leaking and you cannot guarantee permanent isolation.

So the tanks have started to be cleaned up and the process for cleaning them up is underway. But now the Department of Energy wants to say, ''let's have a new definition of that.'' In fact, in the underlying DOD bill, in section 3116, it basically says:

High-level radioactive waste does not include radioactive material resulting from the processing of spent nuclear fuel.

How about that? One change in the DOD bill and billions of gallons of waste in my State is no longer high-level radioactive nuclear waste. Just like that, changing the definition. Yes, it says the Secretary can determine whether various hurdles have been scaled, but that is contradictory to the current law in the 1982 act.

I remind my colleagues this is an act that was passed through this body after hearings, after discussion. I think the process may have taken more than a year. It took more than a year to define high-level radioactive waste. Yet now we want to pass the DOD authorizing bill with this change in it and basically say, ''let's go ahead and reclassify nuclear waste.''

I am not for reclassifying nuclear waste without a debate and a discussion and, frankly, the notion that this underlying bill would reclassify it in such an inappropriate fashion, to say you could somehow call this grouting and that this would be a sufficient way to deal with the country's nuclear waste, is incredible. It is incredible that this is the scam being used on the American public just to get this process in place.

Let's go through some of the history, because as I said, I think this is really sour grapes by the Department of Energy, which has tried to get this policy pushed through and has not been successful. In fact, in 2001, basically, the Department said that they would recreate a better cleanup process. But, they said, we obviously have to get States to agree.

They came to us in Washington State and we said: We have an agreement with you about the level of waste that is going to be cleaned up under the requirements of the Nuclear Waste Policy Act, so we don't really know what you mean by reclassification. At that time they refused to say that they meant they would clean up 99 percent, or all that was technically possible, of this waste.

So we in Washington State said: Listen, it doesn't sound like you have a serious plan for reclassifying waste when you just want to call it a different name. That is not an appropriate process. In fact, Washington State decided not to do that.

Wisely enough, the Idaho court basically said DOE didn't have that ability, they didn't have the ability to reclassify that waste. That is exactly why they are trying to sneak this language in today, because they would like to

continue to say that they can move ahead on a plan that, sure, would save money, but who wants to save money by leaving nuclear waste in the ground, where it is leaking into the Columbia River or the Savannah River, or other areas of the country?

If somebody thinks this is an issue that affects the State of Washington, or affects just Idaho, or affects South Carolina—it doesn't. These are bodies of water, with the potential of nuclear waste in them, that flow through many parts of our country. To pass legislation without debate on changing the Nuclear Waste Policy Act is an incredible statement, that people are willing to override 30 years of law just to do that.

There are other issues I think we need to talk about. I am very pleased the Governor of Idaho, Governor Kempthorne, issued a release saying:

> Federal legislation undermines the cleanup that was to take place in Idaho, at the Idaho facility.

In fact, Governor Kempthorne has said his opposition to the legislation that was passed by the Senate Armed Services Committee is because it allows the Secretary of Energy to withhold an estimated $95 million from cleanup funds, which is part of the debate we are going to have on the underlying amendment. But then he goes on to say:

> I recognize the need to ensure public confidence in how we manage nuclear waste. This legislation would be a huge step backwards, reinforcing public fears about our Nation walking away from nuclear cleanup obligations. I am also concerned this legislation will negatively impact DOE's compliance with the 1995 court settlement case in Idaho.

I think Governor Kempthorne, who has to deal with this, just as Governor Locke does in the State of Washington, has realized what a bad deal this is for Idaho. He realizes the underlying language, when it tries to reclassify waste, is a danger.

I find it interesting that we will forget the Nuclear Waste Policy Act, no problem. We will write our own rule about what hazardous waste is. We will come up with our own definition.

The states of Washington, Idaho, Oregon, South Carolina, New Mexico, and New York filed into the court case and in their amicus brief said:

> DOE cannot ignore Congress' intent . . . by simply calling [high level] waste by a different name.

South Carolina joined that case. South Carolina went to the courts, put its name on a brief, objecting to the DOE attempt to reclassify high-level nuclear waste by issuing an order.

Why all of a sudden are we now going to listen to one State tell us they have the right to decide they are going to keep nuclear waste in their State and they are going to call it something else? Nuclear waste that reaches the Savannah River does not affect just South Carolina, and a definition in statute that conflicts with the Nuclear Waste Policy Act does not just affect South Carolina; it affects everyone. That is not the way to legislate, by sneaking it in without having full public debate about this issue and the obligations we have for nuclear waste cleanup.

What has the Atomic Energy Commission said? Basically, it said in 1970 that over the life of these tanks, basically you have a problem. Basically, what you are saying when you assume that you will take those Hanford tanks or Savannah River tanks or Idaho tanks or West Valley tanks, and you are going to leave material in them and somehow put cement over the top of them and everything will be okay—that is counter to all the science we have had for 50 years.

The Atomic Energy Commission said ''over periods of centuries,''—guess what, that is what happens when you leave it in the tanks for a long period of time; you are talking about centuries—''one cannot assure the continuity of surveillance and care which tank storage requires.''

(Mr. CRAPO assumed the Chair.)

Ms. CANTWELL. They are saying if you put in high-level waste, we cannot tell what will happen to that over a long period of time. That is why the decision was made to take it out and put it in a permanent storage facility somewhere else, because these tanks do not have the capacity.

The science says that once you do the grouting of this waste, unfortunately, your opportunity to do other things is much more difficult. Once you have poured cement on the ground and solidified it, the process of getting it out and retrieving it is made immensely more difficult. In fact, the Institute for Energy and Environmental Research in 2004 said:

> Grouting residual high-level waste in tanks that contain significant quantities of long lived radionuclides . . . Is a policy that poses considerable risk to the long-term health of the water resources in the region.

This statement is from 2004. In 2004, people have said this grouting technique, which basically is storing this in the leaking position in underground tanks, is a threat to the water resources of the region. These tanks are not more than 7 miles from the Columbia River, not 7 miles from one of the major water resources of the Pacific Northwest. It already has a plume of nuclear waste that has reached the river. Fortunately, it is at a level that we can contain today but only if we continue to clean up the tanks.

This proposal to pour cement and sand on top of it and just keep the waste in the ground has not been proven as a secure way to keep the waste intact and water resources clean. So what you are leaving us with in the Pacific Northwest—in Washington, in Oregon, in the tributaries feeding in and out of the Columbia River and into the Pacific Ocean—is the threat of 50 million gallons of nuclear waste not being cleaned up in a sufficient fashion and that waste ending up in the Columbia River. Or in the South Carolina, Savannah River. Governor Kempthorne said it right: this is a huge step backward because it reinforces the public fears about this process.

This Senator wants to have the nuclear waste cleaned up in our State. Some people may not understand the process, or some people listening to this debate may even think this is somehow about four or five States in this country. It is not about four or five States in this country and just about whether we will change the definition of high-level radioactive waste and what we will do about the definition.

That is what I am concerned about today in the underlying bill. This Nation has a responsibility—as it had a responsibility in development of the reactors, the development of the plutonium, and the development of that product—this Nation has a responsibility for the cleanup of those facilities. Oftentimes my colleagues forget about that responsibility until it comes time to do the budget and people see the huge amount of money that is spent on nuclear waste cleanup.

I would be the first Senator to say we have made mistakes in this process. It is mind-boggling to think prior to my coming here that at one point in time somebody gave contracts to a company to produce vitrified logs, and they were not going to pay them until they made the vitrification work. Somewhere along the way people figured that would not work, that the vitrification process was not underway and operating. But now we have been successful and vitrification is starting to take place. That means we are taking the nuclear waste out of the ground and solidifying it into a glass log substance and that glass log substance will then go to permanent storage. So it will be in a facility that can help store that product for an indefinite period of time. That has been the plan. That is the plan on the books. That is the plan of record.

But that is not what the DOE authorizing bill does. It says, ''no, let's reclassify that waste and say that it is not high level. Let's just call it another name, let's call it grout and say it is okay to keep in the ground, let it contaminate water, and let's keep the savings from that unbelievable shortcutting of our responsibilities in the cleanup process.'' I don't think that is something we want to do as a body and government.

I would like to talk about how this legal process worked and why DOE is attempting to do this. What my colleagues seem to want to think today is that this is all about giving the State of South Carolina the ability to negotiate with DOE what nuclear waste cleanup should be. In fact, as I said, in the underlying bill, instead of saying that high-level waste is something that needs to be retrieved, basically that spent fuel from reactors is something

that needs to be retrieved from tanks and put in permanent storage, basically the DOE underlying bill says, no, high-level radioactive waste resulting from fuel process can be reconsidered and considered for a different kind of storage permanently in the tank. And that is something South Carolina and DOE can do together.

That is not what the cleanup partnership really is. The cleanup partnership is not about the State of South Carolina and the Federal Department of Energy interpreting the Nuclear Waste Policy Act in a new way by passing contradictory language.

Let's imagine for a second that we let the State of Michigan determine what the clean air standards are for the State of Michigan. Let's say that EPA and the State of Michigan decided, well, the clean air standards for Michigan are going to be at X level, and that somehow that is OK for Michigan, but somehow we do not think that is going to apply to the rest of the country.

Does anyone think that once it applies to Michigan, some other State is not going to say: How come you gave Michigan an exemption? They continue to pollute the air at a level that the rest of the country does not, which has a higher standard. We are talking about a recipe for disaster in the courts and for predictability in the process. I think it is very detrimental, where we are going with this legislation.

The court process that took place is now on appeal to the Ninth Circuit Court. We are still waiting for a decision. I think the appropriate thing for the Department of Energy to do, while they are waiting for their decision on appeal, is to say they want to come to Congress and have hearings on changing radioactive waste definitions, that they want to come and have a discussion about that.

I appreciate the fact the Senator from Michigan, Mr. LEVIN, as this issue was discussed in the Armed Services Committee, understood the dangerous precedence of this language, and understood how important it was to get the DOD bill done. He basically asked that they not include that language in the bill.

Now, it was a closed-door session. I do not know what the real vote was. I am sure it was a closely, hotly debated issue. But, really, what they put in was section 3116, which would overturn 30 years of carefully crafted laws and 50 years of scientific consensus related to the cleanup of the Nation's radioactive defense waste.

As written, this provision—because it allows DOE to reclassify waste that, as I said, for decades has been classified as high-level waste—basically says the radioactive and chemical toxic components would stay the same. So basically the same toxic level of waste is there, but we are just going to call it another name. I appreciate the fact that the Senator from Michigan tried to change this language and prevent it from being in the bill. Unfortunately, it is in the underlying bill before us.

The underlying bill before us also created a slush fund of $350 million. I find it intriguing. I love knowing a little bit about software because when you share documents and you basically try to make changes to documents, and you e-mail those around to everybody, you can look at the text and see where the changes came from. It is very interesting, this legislation was proposed by a member of the Senate Armed Services Committee. But when you check on who was really the author of the legislation, when you look at who was making the changes to the legislation, it was the Department of Energy.

The Department of Energy wrote the statute and basically submitted it to the committee, and tried to make it look like it was a Member's idea. This is coming straight from the Department of Energy, that lost a court battle, and does not want to wait for an appeal, does not want to come here and fight their battle in the daylight, but wants to try to sneak language in a bill, in the hopes these people will blink on a Thursday afternoon. Well, I am not prepared to have this bill move forward without having this discussion today about this change.

Now, what was DOE's great idea that they submitted through a member of the Senate Armed Services Committee? What was their wonderful idea? Well, besides reclassifying waste, they decided, ''well, let's create a $350 million slush fund that gives the Secretary of Energy the authority to withdraw cleanup funds from the States of South Carolina, Washington, and Idaho—until they agree with our reclassification plan.'' Basically, it was to hold them hostage and blackmail them into agreeing.

As I said, when the State of Washington was offered this deal 2 years ago, we said: ''We are not taking any deal unless we understand what you are cleaning up and how you are cleaning it up. The fact that you think you are going to reclassify and rename this is not good enough for us. Let's see the details.'' When they refused to show us that they planned on cutting cleaning up all this waste, we refused to accept the deal. Now they are hoping they will buy off some other State.

If the Department of Energy really believes science is on their side, if it really believes this grouting technique works, if it really believes this is the process we ought to pursue, then come before the Energy and Natural Resources Committee, come before the EPW Committee, and debate a change to the Nuclear Waste Policy Act, the policy that defines highly radioactive waste and how it should be cleaned up.

I think it is a tragedy, especially when you think about the good job the people did at Hanford, the process by which these people speedily got to the business of helping us in World War II, in the cold war years, and providing us with help and support. They got the job done. They did their job. Now it is our turn to do our job and clean this up.

When you are talking about 100 million gallons of highly radioactive waste that is stored in 253 deteriorating tanks in all of these States—as I said, at Hanford we have 53 million gallons of this tank waste, about 60 percent of the whole national inventory. So 60 percent is in Washington State, along with other high level waste stored in the Hanford 200–Area. That includes spent fuel and miscellaneous volumes that contain high-level waste from offsite which are also buried in the ground.

I am all for considering new technology and new ways to clean up waste and to retrieve waste that is buried in the ground that is considered high-level waste, which may have come from other States or have been basically brought to the Hanford Reservation. Some has been dumped on the Hanford Reservation and then has been part of the storage there for some time, but that is a different issue.

The Nuclear Waste Policy Act makes it very clear that spent nuclear fuel from reactors needs to be placed in a permanent isolated area. That does not mean pouring cement in tanks and calling it incidental. It is very clear about that. So we can talk about other technologies to clean up other kinds of waste, or we can come back and debate changing the Nuclear Waste Policy Act. But because 67 of the 177 tanks that we have in Washington State have already leaked 1 million gallons of waste into the ground, that is 1 million gallons of nuclear waste, this Senator does not take this issue lightly.

DOE estimates that at Hanford, 270 billion gallons of ground water is contaminated above the drinking water standards across 80 miles of this site, and that plumes containing numerous toxins have reached the Columbia River.

I think we have another picture of the Hanford site. I encourage all my colleagues, at some point in time, to go to the Hanford site. This site is in Washington State, but this is a Federal responsibility. It is a Federal responsibility to clean up nuclear waste. It is not just the province or jurisdiction of four or five States in the country. We spend budget money on this issue, and we need to get the job done.

You can see one scene of the Hanford reservation, which is almost as big as—a third of the size—the State of Rhode Island. It is an immense property. I know the senior Senator from Washington State has joined me, and she can tell you—because she was instrumental in getting the Hanford Reach Monument created, preserving some of this as a national monument for us. On the one hand we are preserving it as a national monument and then deciding one day we are going to take high-level radioactive waste, rename it, let the plume that is already reaching the Columbia River to stay in the ground, and that somehow by putting cement

and sand on it, we are all going to be OK.

Everybody wants to say how much cheaper that proposal is. I think everybody in America gets how cheap it would be to pour concrete and sand. What they want to know is whether it is safe, whether it is the right technology, whether it is going to stop the plumes or leaking tanks, whether you are going to change the current law first to get there.

This is a beautiful, pristine area of our country that we can preserve, but only if we do the job we are responsible to do, as the people who created the B reactor and created this facility were responsible in doing.

To be irresponsible today by offering this on the DOD authorizing bill and thinking we are going to have a debate about it in a few short hours and change 30 years of law and 50 years of science is shameful. It is shameful that we think we can have this kind of discussion in a few hours and wrap up a decision. If people are so sure about their position, then hold the public hearings and have the debate. Because these tanks are leaking and one million gallons have already leaked in my State. It is not something that is a tomorrow issue.

What about the science? Let's go back, so my colleagues are clear about how we got here. Congress required DOE to clean up these sites and make it a priority, and they did that in that 1982 act. That act reflected science dating back to 1950, when the National Academy of Sciences recognized that high-level radioactive waste, such as the waste at Hanford, must remain isolated from human beings and the environment long enough for the radioactivity to decay. That is a long process.

That is why the Atomic Energy Commission, a precursor to the Department of Energy, also recognized something must be done to treat high-level radioactive waste in the tanks and at these DOE sites, and they referred to ''over a period of centuries.'' As I said earlier, this isn't a problem where you think about it for a few years or even a decade. You have to come up with a solution for centuries.

Over a period of centuries, the Atomic Energy Commission wrote in 1970, ''one cannot assure the continuity of surveillance of care with storage tanks.'' Basically they said, you can't get it done with storage tanks. So the science has not changed since then.

Yet there are provisions in this bill where DOE says, let's throw out the science. And the provision in this bill would allow DOE to take 50 years of science and leave an indeterminate amount of toxic sludge in these leaky tanks and simply say: Mission accomplished. I think we have heard that statement before.

What science says is that grouting residual high-level waste in tanks that contain significant quantities of long-lived radionuclides is a policy that possesses considerable risk to the long-term health of the water resources of the region. That is what science says.

The grouting proposal that is in this bill is a considerable risk. In the State of Washington, we are very familiar with this. In Washington State, thank God our Department of Ecology has had strong reservations about grouting and we have vocalized those. For us, because it is 50 million gallons of this highly radioactive waste, it would have to have been a plan for durability for 10,000 years. That is what you would have to have. That is how radioactive the waste is.

What is bothersome is when people say an indeterminate amount, that is what DOE can decide. An indeterminate amount? The last 8 percent of the waste in the tanks has 50 percent of the radioactivity. Think about that. So we are saying in this underlying bill, go ahead, DOE. Leave an indeterminate amount in the tanks. Maybe they will say let's leave 10 percent. Maybe they will say, let's leave 5 percent. We know at 8 percent it is 50 percent of the radioactivity.

We think the grouting plan is something that is not the way to go. We set it aside in Washington State. We said that basically glassifying or vitrifying the waste was the way to go. That means that process of turning it into a glass structure so it is a solid structure and taking it to permanent storage was a better way to go.

As I said, in 2002, DOE wanted to use this accelerated initiative. We in Washington State had people come and talk to us about what accelerated cleanup was and what the schedule would be on high-level waste. And we said: We want to understand how you are going to comply with the agreements that are already on the table and with the Nuclear Waste Policy Act, with the triparty agreement, because this isn't the first time the Department of Energy has had debates with the State about their responsibilities for cleanup.

I can't imagine that there is an OMB director or a DOE executive who does not come to that post and look at the numbers involved in cleanup and basically says: Boy, there has to be a way we can get this done quicker and cheaper. I am all about getting it done quicker, given that I have a million gallons already leaking and running into the Columbia River. I am all about quicker. But I am not about a plan that has not been verified by science, that has not had a hearing in a full committee as to this process and what it will mean.

Everybody gets the quick factor, but who said cleaning up nuclear waste in America should be about doing it on the cheap? It is about doing it the right way. As the Atomic Energy Commission said, it is about keeping it out of the reach of humans for centuries.

Subsequently DOE has insisted upon researching new technologies for the treatment of Hanford tanks, this new form of grout, cast stone, steam reforming, and different forms of vitrification. In all, I think there were three cases. DOE said they would still retrieve waste from the tanks, but try to treat it and bury it in steel containers and lined trenches in the Hanford site.

I can tell you, even the new and improved grout was quickly rejected by the State of Washington and by other scientists.

According to the officials at the Washington State Department of Ecology, grouting would have violated the State requirement that any alternative waste that was not performed at the vitrification objected to. And, in addition, the State found that this grouting would still pose ground water risks and create leaching; furthermore, that this would violate drinking water standards.

Even more interesting is the fact that the grouting was not to be found more efficient. In some instances, grouting wasn't found to be any cheaper than other options of cleaning up the tanks. While everybody says that pouring cement and sand on this is a great way to clean up nuclear waste, most people figured out that leaking would still happen and that nuclear waste would still need to be removed. They figured out that it was even more expensive to remove than waste.

So those are the scenarios with which we are dealing. Those are the scenarios that have been discussed. This debate—whether we want to reclassify nuclear waste and call it low-level waste and say we are going to grout it—might be new to some of my colleagues in the Senate as to. But for the State of Washington, we already said this plan wasn't acceptable science, and that reclassification was something we didn't think we should go along with, when DOE wasn't willing to give us a definition on how they were going to clean up the waste.

So this is very difficult because the tanks holding sludge and salt cake and hard heels—this would mean the waste in those tanks would not be penetrated to remove and segregate the radionuclides. The hazardous material would not be separated out and removed. It means those tanks would not be thoroughly mixed without the right level of product. Basically, what they found is that grout, as engineered, is not an option that protects human health and the environment for such a significant portion of tank waste, when we don't know the definition, because it is an indeterminate amount of tank waste.

As I said, even the last 8 percent of tank waste includes 50 percent of the radioactivity. How do you know, by using this grouting process, that you have successfully rendered this a non-hazardous substance? So grout as an in-tank treatment for significant waste volume will be, as I said, probably more expensive than other routes when we find out that it is not successful.

The best science says is don't hold States hostage by reclassifying waste

and telling them we are not going to give them money for cleanup unless they agree to our definition. This definition is something that the Department of Energy thinks they can come up with on their own. But the courts have determined that DOE doesn't have that authority.

The courts have not sided in DOE's favor. The courts have not said don't go ahead with cleanup. They didn't say you cannot move forward on cleaning up the tanks. The courts said: DOE cannot move forward on its plan of reclassifying waste and saying that it is a grout process and that is going to work. It says you cannot move forward on that.

So back to the underlying bill and what happened in the Defense authorization bill. There was an amendment that would enable the Department of Energy to exempt an intermediate amount of highly radioactive waste from regulation as high-level radioactive waste.

I am reading from legal counsel's interpretation of this underlying provision in the DOD bill. This interpretation says the amendment would allow the Department of Energy to continue to store waste long thought destined for deep geologic repository in existing storage tanks or send them to waste isolation pile-up plants or low-level radioactive waste burial sites. It also would exempt the Department's handling of those wastes from the license and regulation by the Nuclear Regulatory Commission. It will, in short, overturn the fundamental legal principles that have governed the disposal of these wastes for the past 30 years.

This legal briefing goes on to point out—which I think is very important—that for nearly half a century, when the DOE and its predecessors made plutonium for their nuclear weapons, they did so by irradiating uranium fuel, transforming it into plutonium, and reprocessing the spent fuel, as I showed in the picture with the reactor. And that became high-level radioactive waste. This is the term given to the plutonium spent fuel from the reactors was high-level waste.

So what did the Nuclear Waste Policy Act say? In 1981, the Nuclear Waste Policy Act said: Let's establish a comprehensive program for the disposal of this spent nuclear fuel, and put it in deep geologic repositories licensed by the Commission.

So let me be clear about this point, because I am sure we will hear about this in the debate. The Nuclear Regulatory Commission was given the responsibility of the deep geological repository license procedure. The Nuclear Regulatory Commission was not given the responsibility for these low-level tanks. The Nuclear Regulatory Commission was not given the responsibility to interpret this change in the DOD bill as it relates to whether this is a cleanup plan and whether they can license it because that is not their responsibility. Their responsibility, as the Nuclear Regulatory Commission, is on Yucca Mountain and the deep geological solution. That is what their responsibility is.

The act directed the President to decide whether high-level radioactive defense waste should be disposed of in the same repository as civilian waste, or in a separate repository. So in 1985, President Reagan decided this defense waste should be put in the same repository as civilian waste.

The 1982 act defines high-level radioactive waste. We had a decision by the President in 1985 that military waste should be treated as civilian waste, and that the civilian waste should be put in the same spot.

So that is the plan we have been on. Now, I have had some concerns about how much waste you are actually going to take out of Hanford because, I tell you what, I want more than 17 percent of the waste taken from Hanford to go to Yucca Mountain. I want it cleaned up and I want it in a permanent place.

I don't want grouting and I don't want to have plumes continuing to leak. But that was the decision made in 1985, and the President made that decision. They said, let's vitrify this waste, glassify it, take it out of the tanks, turn it into glass logs, and take that to a site for permanent storage, wherever that site is.

The plan, since 1985, has not been to pour cement and sand and create grout leaving some percentage, some indeterminate amount of waste in tanks.

I cannot emphasize how important it is if DOE believes in this philosophy, this science, if DOE thinks this is the successful course of discussion that should happen with spent nuclear fuel, then come to the broad daylight of a Senate hearing and make their case and put that before the appropriate Senate committees. If they are so proud of their science and the standing of their decision, they should have no problem doing that. As Governor Kempthorne of Idaho said, when you don't end up achieving public consensus, you don't do anybody any favors.

The issue is the Department of Energy knows all too well, because these States of Washington, Oregon, Idaho, and South Carolina challenged the Department of Energy in court, that these States do not believe this order or plan for reclassifying waste is sound science. They do not believe it is sound science. That is why they challenged it in court.

I know the Department of Energy knows they cannot waltz into the Senate hearing rooms and make their case without hearing the critiques of the experts who have been dealing with this issue for years and years. And by ''the experts,'' I mean not only the scientists, but the people who have to live with the economic and health consequences of having a million gallons of nuclear waste leak into the ground and make its way to the Columbia River. Those people are paying attention, and they are paying attention to the fact that this science is not standing the test of daylight and scrutiny. If it were, they would be here debating it.

I am saying to them now, this Senator, and I am sure members of other committees, welcomes the opportunity to understand this technology, to understand this new process, to understand exactly how taking some level of spent fuel from these reactors in these underground tanks and somehow pouring a grouting material on them is going to make for a successful cleanup effort.

I am sure my colleagues would love to hear if it actually saves billions of dollars and can be safe and sound science. But if that is the case, then we should not be in a rush today. After the courts have already said DOE does not have the authority to change this policy without the approval of Congress, the Nuclear Waste Policy Act, my colleagues should not be in a hurry to pass this legislation that basically says in a contradictory form: Go ahead, DOE Secretary, reclassify the waste because nuclear waste from spent fuel does not have to be classified as highly radioactive.

The definition of highly radioactive waste that is used in the Nuclear Waste Policy Act was initially modeled after the definition found in the West Valley demonstration project. That is a commercial site in New York. I am again reading from the legal opinion Energy counsel has provided to us.

It basically said waste produced by reprocessing of spent fuel, that it included both liquid waste and that waste directly from reprocessing and dry solid material derived from that solid waste.

In addition, it gave the Nuclear Regulatory Commission the authority to include other waste in the definition of such material. Significantly, West Valley gave the Commission power to add material other than reprocessing waste to the definition, but not to exempt any part of the processing of waste.

We have had this debate, and I know the Department of Energy objected to the definition. I know they wanted the regulatory agencies to be able to exclude material from high-level radioactive waste. I know that is what they wanted. But Congress rewrote the definition, not as the Department asked, but, as enacted, the final definition provides, as I said earlier, high-level radioactive waste means material from reprocessing of spent nuclear fuel, and that other radioactive material that the Commission, consistent with existing law, determines requires permanent isolation.

That is the process by which we, as the legislative branch, have gotten to the point of making decisions about this incredible product that was made by men and women throughout our country in the 1940s. It was a time of great military need, during World War II and the cold war. And they did their job, as the federal government had asked.

Now we are saying we are going to ignore the definitions and the process and not really have a hearing on the Nuclear Waste Policy Act or the fact that the DOE has already been turned down in the courts in its ability to reclassify that waste.

Mr. ALLARD. Mr. President, I wonder if the Senator from Washington will allow me a moment.

Ms. CANTWELL. Does the Senator have a question?

Mr. ALLARD. Pardon?

Ms. CANTWELL. Does the Senator have a question?

Mr. ALLARD. I do not have a question. I wanted to know how much longer the Senator from Washington will take because we have Members in the Chamber who would like to speak. They have schedules and would like to get some feel of when their opportunity may come up to speak.

Ms. CANTWELL. Without yielding the floor.

Mr. ALLARD. Mr. President, I ask the Senator from Washington how much longer she anticipates taking to complete her remarks.

Ms. CANTWELL. Mr. President, I have some more material on the history of the process. I see 2 of my colleagues in the Chamber who are also very concerned about this issue, but I imagine at least another half hour or so longer, maybe more.

Mr. ALLARD. I thank the Senator for that guidance.

Ms. CANTWELL. Does the Senator from Washington have a question?

Mr. ALLARD. I would hope we could go back and forth. I think that is the way the debate has been going. The next Senator I will call on is Senator INHOFE, and then whoever on your side.

Ms. CANTWELL. I obviously want my colleagues to join in the debate on this issue, but the reason this Senator feels so strongly about this process is because I do believe this measure does not belong on the Defense authorization bill. We have a very important piece of legislation that needs to move through the process, and yet we have an entity the courts have turned down, that believes that States have turned them down, that believes this is a controversial issue, and thinks they ought to sneak it in on a DOD bill and that is a way to do legislation. It is not the way to do legislation.

This is the only opportunity we have to expose the fact this legislation has been drafted this way and the unbelievable effect it has on so many people in this country when the Department of Energy can author legislation and give it to a member of the Senate Armed Services Committee who then offers it in a mark-up in private and includes it in the legislation.

I am going to take a little more time to go over these facts because I think the bright light of day needs to shine on the fact the Nuclear Waste Policy Act of 1982 ought to have the attention of the Energy and Natural Resources Committee and ought to have the attention of the Environment and Public Works Committee and not be proposed on the Defense authorization bill without the scrutiny of public debate and foresight that such a huge, significant change in policy would bring about.

This is why I am going to take as much time as necessary to explain this policy and to say to the members of the Senate Armed Services Committee that while any member has the ability to offer any amendment they want, including in an authorizing bill, usually it is the other way around. We have authorizing on appropriations and issues of that nature that have caused——

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

Ms. CANTWELL. The Senator will yield for a question.

Mr. INHOFE. I remind the Senator from Washington, if she is concerned about the action that we had proposed with the Environment and Public Works Committee, I chair that committee and I am waiting to be heard concerning this issue because I also have a lot of interest in it. I appreciate the fact that the Senator is suggesting our jurisdiction should be heard, and that is what I am waiting to do.

Will the Senator agree with that?

Ms. CANTWELL. I thank the Senator for his question. The issue is that the Senate Armed Services Committee should never have voted and considered this legislation in a closed door session without those hearings. So I certainly want the Member to be heard but—I think I have the floor, Mr. President.

Mr. INHOFE. Will the Senator yield the floor for a question?

Ms. CANTWELL. I think I have the floor, Mr. President, and I will yield in a moment for another question.

The issue is that we have been trying to work with the author of this legislation on a compromise that would promote a dialog and a hearing. My staff has been working diligently since the language came out of the Senate Armed Services Committee.

This morning we learned without warning, without notice, that perhaps now they did not want to continue discussion on that, they did not want to continue discussion on how we brought this issue to light.

I really did not want to spend the afternoon on the Senate floor. We had hoped we would actually propose a better process and procedure, but others want to move forward on changing the underlying bill, which in this amendment is still flawed. The proposed amendment by Senator GRAHAM of South Carolina makes a bad situation slightly better but does not correct the underlying problem. And this Senator whose home state has one million gallons of nuclear waste flowing to the Columbia River—is going to be heard on the details of this proposal.

The fact that we have not had a full public hearing on a significant change in 30 years of policy and 50 years of science is something that, if it takes me 5 hours to explain, I will take it. I will take the 5 hours to explain to my colleague the significance of these changes.

Mr. WARNER. Mr. President, will the distinguished Senator yield for a question?

Ms. CANTWELL. I will yield to the Senator for a question.

Mr. WARNER. I thank the Senator. May I most respectfully explain that under the Senate rules of allocation of committee responsibilities, this issue of the nuclear waste is directly within the purview of the Senate Armed Services Committee. We control, through oversight, 70 percent of the budget of the Department of Energy. The cost of nuclear waste cleanup comes before our committee. So I want to say to my distinguished colleague, while she may have concerns about the legislative process as a whole, there is no doubt about the jurisdiction of the Armed Services Committee over this subject.

We have put in our bill, which is now at the desk and the subject of debate, the specific provisions the Senator is addressing. Jurisdictionally we had the perfect right to incorporate in our bill such legislative language we deemed as a committee necessary for dealing with this question of this specific type of nuclear waste. I was not certain that the distinguished Senator was aware that clearly this is in the jurisdiction of this committee.

Ms. CANTWELL. I thank the Senator for his question, but under rule XXV, the Armed Services Committee has jurisdiction over national security aspects of nuclear energy, the Energy and Natural Resources Committee has jurisdiction over nonmilitary development of nuclear energy, and the EPW Committee has jurisdiction over the nonmilitary environmental regulation and control of nuclear energy.

Undoubtedly SASC has jurisdiction over the reprocessing that created the tanks to begin with because DOE was responsible for the national security, but I do not see how anyone could seriously argue how the waste, disposal, and cleanup of the Nuclear Waste Policy Act is a part of the national security aspect of the Senate Armed Services Committee's jurisdiction.

While I am more than happy that the committee has used this authority to bring this issue up, I think the committee is doing an injustice to say to our colleagues that a change that is in contradiction to the Nuclear Waste Policy Act ought to be passed by the committee without hearing, without debate, without full scrutiny of public daylight. This provision would really contradict 30 years of law on the books when the agency promulgating that rule change lost a court battle basically telling it it does not have the authority to redefine high-level nuclear waste.

I fully respect, because of all the committees that I work with, I know that the chairman of the Armed Services Committee always strives to be fair and balanced at his hearings. And

there are difficult challenges that we have had over many sensitive subjects in the last several weeks. The chairman has gone way out of his way to make sure the continuity of that committee works well and that the rules and processes are followed. But I say to the chairman that if the Department of Energy is so sure about these statutory changes they are promulgating through his committee without debate, then they ought to be willing to have the hearings and have the debates with the other committees that have jurisdiction for the cleanup, not the national security efforts the Senator was responsible for as the chairman of that committee.

Mr. WARNER. Mr. President, if I could reply, without the Senator losing her right to the floor, I will shortly bring the President's budget request for funds. I will bring appropriations acts and I will show the Senator the direct linkage of the request for funds coming to the Armed Services Committee, the Armed Services Committee bill going to the Appropriations Committee, and action by the Appropriations Committee on the authorizations of expenditure of the funds for nuclear waste and cleanup. It is irrefutable, and I will take a little time to go out and get the documentation. Then I will ask unanimous consent to print that documentation in the RECORD.

I thank the Senator.

Ms. CANTWELL. I thank the chairman again for his statement. I point out to him that the difference between authorizing for appropriations and oversight of policy, and what I am debating is that the committee's oversight over nuclear waste cleanup policy as set out in the Nuclear Waste Policy Act. When that was passed in 1982 and moved through the legislative branch and made its way through the debates, it was debated in the Energy and Natural Resources Committee and EPW Committee. As the parliamentarian referred to those committees, I am sure that the SASC, because of its nature of the appropriated funds, has some responsibilities. But I do not think that the SASC is the committee of jurisdiction for changing the Nuclear Waste Policy Act. I do not think that is the primary responsibility of that committee.

So, I don't know. I say to the Senator, the chairman of the Senate Armed Services Committee, I have a great deal of respect for his willingness at all times in the most difficult of situations to try to have consideration of issues be as fair and balanced as possible, and to give Members their opportunity. I am happy to continue to discuss with him the nuances of this particular issue. But I have a feeling that if we had this Nuclear Waste Policy Act before us today and we asked the Parliamentarian—this change that is in your bill, under a separate act, under a separate stand-alone bill—it would not be referred to that committee. It would be referred jointly to those other committees and maybe to SASC in the authorizing of an appropriation, but not for the policy change.

Mr. WARNER. Mr. President, I will reply later today with the documents in hand.

Ms. CANTWELL. Mr. President, I think there are several other people here.

Mr. REID. Will the Senator respond to a question from the Senator?

Ms. CANTWELL. Without losing my right to the floor.

Mr. REID. Yes. I say to my friend from Washington, having spoken with her, it is my understanding the Senator has said publicly that if we came back after the break, the Senator would be willing to look very closely at the amendment pending and would be willing to offer one of her own, that she would agree to a time certain on that amendment. Is that true?

Ms. CANTWELL. I simply want the issue to have the appropriate amount of debate and dialog. All of us will have the opportunity to vote up or down on any of the amendments anybody wants to offer to this section. But the question before us was, all of a sudden at 11:30 today, without notice, when we had been in negotiations on this language, to bring it to the floor, this Senator feels obligated to make sure this time period is used to bring committee members and colleagues up to speed about the contents of the underlying bill.

Mr. REID. Does the Senator yield for another question?

Ms. CANTWELL. Yes.

Mr. REID. It is my further understanding the Senator, who has spoken for some time now, has a lot more to say, is that right, on this amendment, on this date? She has only gotten warmed up; is that right?

Ms. CANTWELL. That is correct.

Mr. REID. And you, as a matter of courtesy, will allow Senators HOLLINGS and MURRAY and anyone on the majority side to speak and you will be back at a later time for another round or two; is that correct?

Ms. CANTWELL. That is correct. I will give my colleagues from Washington and South Carolina an opportunity to join in this debate and participate because I think it is very important that this issue receive the full attention of Members. As I said at the beginning of this discussion, I do not believe this is an issue—even though a lot of my colleagues would like to classify it as an issue that only affects Washington State, South Carolina, or Idaho perhaps with some impact on Oregon and maybe Georgia, or New York in its commercial facility. I have never thought of this nuclear waste issue as a geographic-specific debate.

Our responsibility as a body is to make sure nuclear waste cleanup happens in a process that the science determines will not be with harm to humans or to the environment. We now have a proposal before us that science says will be harmful, that is not based on sound science, that has not met the test, nor has our approval.

While I am willing to have this debate, I hope my colleagues will use this debate as an opportunity to understand our challenge on nuclear waste cleanup and the tremendous amount of resources that are spent by our Government on that cleanup and the efficiencies that need to happen to make that process go more smoothly than it has in the past.

But I can guarantee to my colleagues that wanting that process to go more smoothly in the future, and wanting it to be more cost effective, does not simply mean coming up with a short-term proposal, a fix that is counter to what existing statute and law is. If we want to have that debate, let's go through the normal committees and have that debate, and let's have the scientists come in and discuss it with us, and let's not end up with a process where we are going to be battling in the courts. I don't think that does any of us any good. Certainly, for us in the State of Washington, with a 1-million-gallon plume heading toward the Columbia River, it doesn't do us any good.

I hope my colleagues will use this opportunity to focus attention not just on the question at hand, of high-level radioactive waste, but I would say the consistency by which the States of Washington, Oregon, Idaho, South Carolina, and others have banded together in the last year or two in authorizing and appropriations language that has done a good job to make sure the processing of radioactive waste is completed.

I remind my colleagues, this is the first time I think the Department of Energy has successfully picked off a State. At first the underlying language was actually blackmail: We are going to make this change and nuclear waste is going to be reclassified, and if you are going to agree with us, we will give you some money, and if you don't agree with us, we are not cleaning up your waste. That is blackmail. That is what the current language in the DOD authorizing bill is. It is blackmail.

Now, after my colleagues have seen what ludicrous language that is, Senator GRAHAM wants to offer an amendment that will not tie up the funds. But we still remain with the underlying problem, which is the Department of Energy is trying to reclassify highly radioactive waste as low-level ancillary waste and say it can be grouted, that is that cement and sand can be poured on it and somehow, leaving incidental amount of tank waste is a sufficient way to clean up tanks.

I will continue to fight on this issue until Members understand the significant policy change that is before this body.

I ask unanimous consent after the remarks of Senator INHOFE that Senators MURRAY, ALLARD, and HOLLINGS be recognized, and that I immediately be recognized after them.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Washington has the floor.

Ms. CANTWELL. I want to accommodate the Senator from Nevada. I was proposing to accommodate and trade off recognition of the four Members who are present on the floor?

Does the Senator have a question?

Mr. REID. When the Senator yields the floor, I will speak.

Ms. CANTWELL. The Senator from Nevada—I am happy to yield the floor to the Senator from Nevada.

Mr. REID. Pardon me?

The PRESIDING OFFICER. Is the Senator yielding the floor?

Several Senators addressed the Chair.

Ms. CANTWELL. Does the Senator from Nevada have a question?

Mr. REID. Mr. President, I yield to the Chair. I have a question on that statement. The Senator from Washington has a right to speak, but we are not going to set a long list of speakers here at random, what speakers are going to speak. I think what we are going to do, we have a number of speakers on the floor, Senators INHOFE, HOLLINGS, ALLARD, MURRAY—people who have been here for a long period of time.

It appears to me we are not going to have a vote on this in the near future. I suggest what we do is enter into agreement for the next several however long it takes. We have people who want to speak. We can go forward and whoever gets the jump ball, have people be recognized whenever they get the floor.

Senator HOLLINGS has said Senator INHOFE has been here longer than he has. Senator INHOFE could be recognized for whatever time he feels appropriate. I would like to get some idea of what the time should be. Then, Senator HOLLINGS, I think that would be the best way to go.

But in the meantime, it must be under some agreement, whoever gets the floor.

Mr. ALLARD. Will the Senator from Nevada yield?

Mr. REID. I am happy to.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Ms. CANTWELL. The Senator from Washington is happy to entertain a question that would allow the various Members who are here——

Mr. REID. The Senator from Washington has to understand—she has the floor, and if she wants to keep talking, let her keep talking. When she finishes, we will be happy to——

Mr. ALLARD. If the Senator from Washington will yield, I would like to pose a plan of how we can go through this. I suggest that maybe we can sit down with leadership and work out some time for debate. I know Senator GRAHAM on this side of the Senate floor would like to wrap up this debate. Maybe we can get some time limits to give everybody an opportunity to speak. I know there is some interest in having some votes tonight. I believe I need to work with leadership on this side, if Senator REID will work with leadership on his side, to determine if we can work this out. The Senator from Washington can finish, and I can call on the Senator from Oklahoma. Maybe we can sit down and work out a time agreement.

Mr. REID. Mr. President, if the Senator will yield——

Mr. ALLARD. I yield.

Mr. REID. The Senator from Washington has the floor.

Let me say this: Everyone should understand that there is not going to be a vote on this amendment tonight. Everyone should understand that. There is going to be no vote on the pending amendment tonight. I told people that 5 hours ago. No one believed me. There is not going to be a vote on the Graham amendment tonight.

Mr. ALLARD. Nobody is calling for a vote on this amendment tonight, but there might be other votes.

Mr. REID. We will not agree to set this one side. If the Senator from South Carolina wishes to withdraw his amendment and set some orderly procedure to take it up when we get back after the Memorial Day break, we are in agreement. But we are not going to agree to set this aside to go to another amendment.

Ms. CANTWELL. Mr. President, this Senator is happy to yield the floor to my colleague to discuss this issue. I want to make it clear that after 30 years of standard policy, they are not willing to just have a few hours of debate and then vote on this significant a change. The underlying Graham amendment does not fix the underlying DOD committee-passed authorization language that allows the Department of Energy to reclassify waste.

That is the key issue at hand. We do not want to leave this bill with this reclassification of highly radioactive waste to an amendment on spent fuel storage tanks to then be grouted over. We need to have the attention of this body, my colleagues who are members of the various committees I mentioned and my colleagues from those States directly affected, although I said it is a policy everybody should be discussing, and the public needs to have an idea and an opportunity to understand that this is a major policy proposal which is being proposed in this underlying bill.

I would have preferred that the Graham amendment not be brought up today, not to this particular issue of the DOD bill being discussed. We are still talking. We hoped we might able to work something out and save our colleagues the time and attention of studying a nuclear waste policy proposal and what level of radioactivity could be sufficiently removed from tanks and what couldn't be. But if my colleagues want to continue to pursue the subject, we are going to continue to pursue and discuss this issue.

With that, I know various Members of both sides of the aisle are waiting, and I will have more to say on this subject as we continue to debate the DOD authorizing bill and continue to debate whether the Graham amendment is sufficient in disposing of the problem that has now been created in the underlying bill in overriding 30 years of law and science about how this country should clean up nuclear waste. I don't believe anybody in America wants to do it on the cheap. We need to give the American public the certainty that this body will not propose major policy changes without hearings, without debate, without committees of jurisdiction having oversight of this policy proposal that is in the Defense authorization bill.

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 assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, we are trying to work out, subject to the approval of the majority leader, to allow Senator INHOFE to speak for 15 minutes and Senator HOLLINGS for 45 minutes. They have waited a long time. Senator ALLARD, being the gentleman he is, did want to talk about the subsequent votes; there are a couple of judges who need votes. We have 25 to do before the end of June, so we have a lot of voting to do. Then, of course, everyone should understand that we will be right back on the Defense bill following those votes.

We appreciate the courtesy of the Senator from Oklahoma for being patient and the Senator from South Carolina. The order has not been entered, but that is what we will order. It would be appropriate for the Senator from Oklahoma to start his speech.

Members should understand that we will have a couple of votes around 5:30.

Mr. ALLARD. I yield 15 minutes to the Senator from Oklahoma.

Mr. INHOFE. I ask the manager if I could have 20 minutes, but I will probably not take that long. I am saving the best for last and I don't want to miss it.

Mr. ALLARD. I amend that and ask unanimous consent that the Senator from Oklahoma be allowed to speak for 20 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 20 minutes.

Mr. INHOFE. Mr. President, I will clarify a couple of things that were said by the distinguished Senator from Washington that I am sure she believes are true but need to be elaborated upon. First, characterizing the consideration of going back to the old policy as something that happened in the middle of the night, something that happened in the dark, something that

happened in a less than honest way is not at all accurate.

I suggest two things. First, I chaired the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety of the Environment and Public Works Committee in 1998 and 1999. During that time, of course, we had jurisdiction over the Nuclear Regulatory Commission. During that time, they had countless hearings. They had comment periods. They talked about this out in the open, with people given an opportunity to be heard. I happened to be chairing the committee that had oversight at the time. I remember that very well.

Second, I suggest this was discussed in the Senate Armed Services Committee. It certainly was not something that was done in any way that was less than totally honest and totally done in the daylight. By suggesting that Senator JOE LIEBERMAN and Senator JACK REED and the other Members on this side of the issue did something that was not out in the open, I don't think is quite fair.

We had a hearing this morning with the Nuclear Regulatory Commission. It is an oversight hearing we have had ever since 1998. That is when, in the NRC, I believe we saw a major change. They have done a good job. The NRC says we should manage waste based on the risk it poses, not how it is defined.

The Department of Energy was attempting to pursue this very policy when it was stopped in its tracks. What stopped it? Several of my colleagues already mentioned a lawsuit was brought against the DOE by the Natural Resources Defense Council. This is the allegedly charitable organization that uses a substantial amount of taxpayer dollars in the form of discretionary grants to achieve its goals.

Three weeks ago I spoke in the Senate about the spurious and misleading advertisement run by the NRDC. This organization places a higher priority on imposing ridiculously stringent environmental standards than on essential elements of national security. They have proven this many times in the past by filing lawsuits to limit the Navy readiness exercises and otherwise hampering our military. Now the NRDC has hamstrung the Department of Energy in the faithful execution of its responsibilities.

This amendment allows the DOE to pursue the best plan to dispose of this nuclear material. That plan saves our taxpayers money. It shortens the amount of time the waste remains in the tanks. It is a safe way to do it. It is a well-thought-out way of doing it and one that has been the subject of a lot of daylight. It is merely going back to a policy that has worked for a long period of time.

We know the background. Sometimes it is necessary to repeat it. During the cold war, the national security of the United States necessitated the building of nuclear weapons. Now, 50 years later, we are faced with the legacy of this effort and the need to clean up the sites where there is waste from the reprocessing of spent nuclear fuel. The creation of this waste was a necessary result of the chemical processes needed to make defense nuclear material. We all understand that.

Last summer, this very important cleanup effort, which is the single largest ongoing environmental risk reduction project for the Department of Energy, took a crushing blow when the district court issued a ruling that created significantly illegal uncertainties and enormous problems for the Department's tank waste cleanup at the Savannah River site, the West Valley, the Hanford site, and the Idaho National Engineer Environmental Laboratory. Unless these legal uncertainties are resolved, the only path the Department of Energy could in theory pursue that does have the necessary legal certainty would be to involve sending all the waste in tanks and the tanks themselves to Yucca Mountain no matter how long or short lived is the radioactivity they contain.

This dramatic change in course would increase the costs of the cleanup itself in terms of human lives sevenfold and also delay completion of simply emptying the tanks and treating the waste there by four decades, thereby further substantially increasing the risk, as the NRC pointed out, to the public health and safety during the time period by leaving the waste in tanks for that much longer. It would also increase the cost of simply emptying and treating the tank waste, according to the DOE estimates, by an additional $86 billion, only $1 billion less than last year's supplemental appropriation for the Iraq war, for approximately a total cost of $138 billion.

We are talking about something really big. The estimates for delay and the additional costs do not take into account the very complex logistics of transporting and disposing of all the additional waste at Yucca Mountain or the complex logistics of preparing for disposal, transporting, and disposing of the tanks themselves. Keep in mind, it is not just what is in the tanks. The tanks themselves would have to go there and be disposed of at the Yucca Mountain facility. These would also add additional decades and tens, if not hundreds, of billions of dollars to the cleanup cost.

Furthermore, under this scenario, the number of canisters of waste that would be transported to Yucca Mountain would increase from 20,000 canisters to approximately 200,000 canisters.

I know there are a lot of members in the Senate concerned about the transport of waste to Yucca Mountain. That would increase it tenfold. Some have asked, why not just authorize and appropriate $350 million needed for the cleanup activities in fiscal year 2005 and force the Department of Energy to continue its work? This is not a responsible path. If the Department of Energy constructs the facility necessary to prepare waste for disposal as low-level or transuranic waste and prepare the waste for disposal and then finds out after the fact that it lacked the legal authority to classify the waste in this manner, hundreds of millions of dollars of the taxpayers' money would already have been wasted and years of cleanup work lost. The Department may have actually made it harder to put the waste in the form needed to dispose of it at Yucca Mountain.

The fundamental root cause of the dilemma that faces our Nation today is the ambiguity presented by the Nuclear Waste Policy Act's definition of high-level waste and that, if left unclassified, is producing this technologically irrational result without environmental benefit that, in fact, increases health and safety risks.

It is up to this committee and this Congress to resolve ambiguity in order for the cleanup of the sites which played such a key role in the national security of our Nation. The language before the Senate clarifies the ambiguity, and I urge adoption of this language.

What had happened on this, back in the time it was considered in SAS Committee—the Senate Armed Services Committee—was that it was an amendment to actually go back and do it as it had been done before, to do it in the best way, as determined by the multitude of hearings that were conducted by the Nuclear Regulatory Commission and which were conducted during the time I chaired the oversight committee. So we were there. We knew it was taking place.

The thing that I guess bothers me the most—I see the ranking minority member of the Senate Armed Services Committee on the Senate floor. We acted very responsibly. This was not a partisan issue. This was a bipartisan issue. To infer in any way that things were done in the dark of night or in any way inappropriately is to say that I and several others—certainly the chairman of the committee; certainly Senator JOE LIEBERMAN; certainly Senator JACK REED, who supported this effort and supported the Senator from South Carolina—were acting inappropriately. I do not think that is realistic.

By the way, it has been said several times that there is some doubt as to what the NRC's position is on this issue. I will read the last paragraph of a letter that was sent to me, on May 18, as chairman of the Environment and Public Works Committee. This last paragraph says:

> It is our understanding that some opponents of DOE's proposed plans believe that the tanks and the waste residuals should be disposed of as high-level waste in a geologic repository. While either approach could potentially be implemented within NRC regulatory requirements, we note that removal of the tanks, packaging of the tanks and residuals for transport and disposal, and disposal of the waste at a geologic repository, if feasible, would incur significant additional worker exposures—

That is human lives. We are exposing individuals.

and transportation exposures—

The transportation exposures we have talked about on this floor many, many times—

at very large financial costs.

You might conclude that, at this time, with all the terrorist threats around, these could become prime targets while being transported. Still quoting the letter:

Whereas, if DOE's proposed plans meet appropriate criteria, such as those used in NRC's previous reviews, then the NRC believes that public health and safety can be maintained while avoiding unnecessary additional exposures and risks associated with removal and transport of the waste and unnecessary additional expenditures of Federal funds.

I hope this letter satisfactorily addresses your questions.

Mr. President, I ask unanimous consent that the entire letter from the NRC to me dated May 18 be printed in the RECORD.

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

NUCLEAR REGULATORY COMMISSION,
Washington, DC, May 18, 2004.

Hon. JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request of May 18, 2004, for the U.S. Nuclear Regulatory Commission's (NRC's) views on waste-incident-to-reprocessing (WIR). Specifically, you requested NRC's thoughts on: (1) the U.S. Department of Energy's (DOE's) plan to grout in place the remaining residues left in the tanks at the Savannah River Site (SRS), the Hanford site, and the Idaho National Engineering and Environmental Laboratory (INEEL); and (2) the risks to human health and the environment by following DOE's plan or the Natural Resources Defense Council' (NRDC's) plan. The concept underlying WIR is that wastes can be managed based on their risk to human health and the environment, rather than the origin of the wastes. For wastes that originate in reprocessing of nuclear fuel, such as the tank residuals at the DOE sites, some are highly radioactive and need to be treated and disposed of as high-level radioactive waste. Others do not pose the same risk to human health and the environment, and do not need to be disposed of as high-level waste in order to manage the risks that they pose.

At the outset, it must be understood that the NRC does not have regulatory authority or jurisdiction over SRS, Hanford, or INEEL. In the past, DOE has requested NRC review of some of its WIR determinations and supporting analysis. The NRC entered into reimbursable agreements to perform these reviews, which were provided as advice and did not constitute regulatory approval. NRC performed comprehensive and independent WIR reviews for Hanford in 1997, SRS in 2000, and INEEL in 2002 and 2003. These reviews involved both waste removed from tanks, and waste residuals remaining in the tanks for grouting and closure. NRC assessed whether DOE's determinations had sound technical assumptions, analysis, and conclusions with regard to specific WIR criteria. These criteria are: (1) the waste has been processed to remove key radionuclides to the maximum extent that is technically and economically practical, and (2) the waste is to be managed so that safety requirements comparable to the performance objectives in NRC's regulation 10 CFR Part 61 (Licensing Requirements for Land Disposal of Radioactive Waste), Subpart C, are satisfied. In all cases, the NRC staff found that DOE's proposed methodology and conclusions met the appropriate WIR criteria and therefore met the performance objectives and dose limits that would apply to near-surface low-level waste disposal and would protect public health and safety. It should be noted that the Commission did not review all of DOE's actions with regard to WIR at those sites, and that the NRC conclusions applied only to those actions that the NRC reviewed. It should be noted that the Commission in its ''Decommissioning Criteria for the West Valley Demonstration Project (M–32) at the West Valley Site; Final Policy Statement'' (67 FR 5003, February 1, 2002), established WIR criteria for that site identical to those used in our reviews of the three DOE sites.

It is our understanding that some opponents of DOE's proposed plans believe that the tanks and the waste residuals should be disposed of as high-level waste in a geologic repository. While either approach could potentially be implemented within NRC regulatory requirements, we note that removal of the tanks, packaging of the tanks and residuals for transport and disposal, and disposal of the waste at a geologic repository, if feasible, would incur significant additional worker exposures and transportation exposures at very large financial costs. Whereas, if DOE's proposed plans meet appropriate criteria, such as those used in NRC's previous reviews, then the NRC believes that public health and safety can be maintained while avoiding unnecessary additional exposures and risks associated with removal and transport of the waste and unnecessary additional expenditures of Federal funds.

I hope this letter satisfactorily addresses your questions.

Sincerely,

NILS J. DIAZ.

Mr. INHOFE. We have a lot of commissions and a lot of organizations in the committee that I chair. We have some 17 Departments for which we have oversight and we deal with on a daily basis. When the Nuclear Regulatory Commission was originally formed, it was to have the expertise and the knowledge as to what is going to assure the most safety for the public in the cheapest way you can get things done. They have done a good job. We have a lot of organizations such as this throughout Government. We have CASAC, the Clean Air Scientific Advisory Committee. We look to them because they have expertise. We look to the NRC because they have expertise.

I do not want to imply that any of the Members here would have necessarily less expertise than the NRC, but I suspect that is the case. So we rely on that expertise. Here we have the Department of Energy with all of its experts saying: This is the safe way to do it. This is the cheapest way to do it. And we have the NRC, which is charged with the responsibility of public safety, saying: This is the best way to do it.

So I believe, when the time comes, we need to look at this rationally and not try to make disparaging remarks about some of the members of the Armed Services Committee in our consideration of this amendment. Keep in mind, this was years in the making. Six years ago we started hearings on how to properly dispose of this, and the conclusions they came to were unanimous.

With that, Mr. President, I yield the floor.

Mr. REID. Mr. President, I ask the Senator, are we in a position now to do anything on this request we had?

Mr. ALLARD. No. We are still hearing. Senator INHOFE has finished his statement. I would suggest we recognize the Senator from South Carolina for 40 minutes.

The PRESIDING OFFICER. The Senator from South Carolina is recognized—

Mr. REID. No. The Senator is recognized for whatever time he wants. He has the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from South Carolina.

SETTING THE RECORD STRAIGHT

Mr. HOLLINGS. Mr. President, I thank my distinguished colleagues. I have, this afternoon, the opportunity to respond to being charged as anti-Semitic when I proclaimed the policy of President Bush in the Mideast as not for Iraq or really for democracy in the sense that he is worried about Saddam and democracy. If he were worried about democracy in the Mideast, as we wanted to spread it as a policy, we would have invaded Lebanon, which is half a democracy and has terrorism and terrorists who have been problems to the interests of Israel and the United States.

It is very interesting that on page 231, Richard Clarke, in his book ''Against All Enemies,'' cites the fact that there had not been any terrorism, any evidence or intelligence of Saddam's terrorism against the United States from 1993 to 2003. He says that in the presence of Paul Wolfowitz. He says that in the presence of John McLaughlin of the CIA. In fact, he says: Isn't that right, John? And John says: That is exactly right.

The reason was when they made the attempt on President Bush, Senior, back in 1993, President Clinton ordered a missile strike on Saddam in downtown Baghdad, the intelligence headquarters, and it went right straight down the middle of the headquarters. It was after hours so not a big kill—but Saddam got the message: You monkey around with the United States, a missile will land on your head.

So, in essence, the equation had changed in the Saddam-Iraq/Mideast concerns whereby Saddam was more worried about any threat of the United States against him than the United States was worried about a threat by Saddam against us.

I want to read an article that appeared in the Post and Courier in Charleston on May 6; thereafter, I think in the State newspaper in Columbia a couple days later; and in the Greenville News—all three major newspapers in South Carolina. You will find

that there is no anti-Semitic reference whatsoever in it.

The reason I emphasize that upfront is for the simple reason that you cannot put an op-ed in my hometown paper that is anti-Semitic. We have a very, very proud Jewish community in Charleston. In fact, it is where reform Judaism began. The earliest temple, Kadosh Beth Elohim, is on Hasell Street. I have spoken there several times. I had the pleasure of having that particular temple put on the National Register. This particular Senator, with over 50 years now of public service, has received a strong Jewish vote.

Let me emphasize another thing because the papers are piling on and bringing up again a little difference of opinion I had on the Senate floor with Senator Metzenbaum. It was not really a difference. What had happened was we were discussing a matter, and we referred to each's religion in order to make sure there would not be any misunderstanding or tempers flaring. The distinguished Senator from North Carolina, Mr. Helms, referred to himself as the Baptist lay leader, Senator Danforth as the Episcopal priest. I referred to myself as the Lutheran Senator. And when Senator Metzenbaum came on the floor, I referred to him as the Senator from B'nai B'rith, and he took exception. He thought it was an aspersion. I told him: Wait a minute, I will gladly identify myself as the Senator from B'nai B'rith. I did not mean to hurt his feelings. I apologized at that time but not for the legitimacy and the circumstances of the particular reference.

Now here we go again, some years later. The Senator from Virginia, Mr. GEORGE ALLEN, and I are good friends. Maybe after this particular thing he might feel different, but I know his role as the chairman of the campaign committee. And so I have an article here where Senator ALLEN denounces Senator HOLLINGS' latest political attack, Senator HOLLINGS' antisemitic, political conspiracy statement. Let me read the statement here from the May 6 Post and Courier, and you be the judge:

> With 760 dead in Iraq, over 3,000 maimed for life—home folks continue to argue why we are in Iraq—and how to get out.
>
> Now everyone knows what was not the cause. Even President Bush acknowledges that Saddam Hussein had nothing to do with 9/11. Listing the 45 countries where al-Qaida was operating on September 11 . . . the State Department did not list Iraq.

They listed 45 countries and at that particular date on September 11, 2001, they did not even list Iraq.

> Richard Clarke, in ''Against All Enemies,'' tells how the United States had not received any threat of terrorism for 10 years from Saddam at the time of our invasion.
>
> On page 231, John McLaughlin of the CIA verifies this to Deputy Defense Secretary Paul Wolfowitz. In 1993, President Clinton responded to Saddam's attempt on the life of President George H.W. Bush by putting a missile down on Saddam's intelligence headquarters in Baghdad. Not a big kill, but Saddam got the message—monkey around with the United States and a missile lands on his head. Of course there were no weapons of mass destruction. Israel's intelligence Mossad knows what's going on in Iraq. They are the best. They have to know.
>
> Israel's survival depends on knowing. Israel long since would have taken us to the weapons of mass destruction . . .

Let me divert for a second there. I was here when Israel attacked the nuclear facility in Baghdad during the 1980s. In all candor, when President Bush, on October 7, 2002, said, after all that buildup by Cheney, Wolfowitz, Rumsfeld and everybody else, that facing clear evidence of peril, we cannot wait until the smoking gun is a mushroom cloud, I thought we were attacking for Israel. I thought that they knew about some kind of nuclear development there. And rather than getting them in further trouble with the United Nations and the Arab world, that its best friend, the United States, would knock it out for them. That is why I voted for it. I got misled. Our attack on Iraq, the invasion of Iraq is a bad mistake. I will get into that later. But let me read even further:

> . . . if there were any [weapons of mass destruction] or if they had been removed. With Iraq no threat, why invade a sovereign country? The answer: President Bush's policy to secure Israel.
>
> Led by Wolfowitz, Richard Perle and Charles Krauthammer, for years there had been a domino school of thought that the way to guarantee Israel's security is to spread democracy in the area. Wolfowitz wrote: ''The United States may not be able to lead countries through the door of democracy, but where that door is locked shut by a totalitarian deadbolt, American power may be the only way to open it up.''

Namely, invasion. That is Wolfowitz talking.

> And on another occasion: Iraq as ''the first Arab democracy . . . would cast a very large shadow, starting with Syria and Iran but across the whole Arab world.'' Three weeks before the invasion, President Bush stated: ''A new regime in Iraq would serve as a dramatic and inspiring example for freedom for other nations in the region.''

I referred to those three gentlemen because I know them well. They are brilliant. I have been for years associated one way or the other with each of them. I read Charles Krauthammer. I wish I could write like he can. With respect to Richard Perle, he was sort of our authority in the cold war, best friend of Scoop Jackson. That is how I met him 38 years ago almost. I followed him and I followed his advice, and that is in large measure how we prevailed in the cold war. So I have the highest respect for Richard Perle.

And, of course, the other gentleman, Paul Wolfowitz, Paul Wolfowitz, I met him out in Indonesia when he was Ambassador. He came back. We were good friends. He was looking around for a position, and I know I offered him one—in fact, we might go to the records and find temporarily he might have been on my payroll for a few weeks. But I have always had the highest regard for Paul Wolfowitz.

That is why I referred to him. I had their sayings and everything else. But let me go, diverting for a minute, right to the Project For The New American Century. I have a letter that was written on May 29, 1998, to Newt Gingrich, the Speaker, TRENT LOTT, the Senate majority leader. These are the gentlemen who said this:

> We would use U.S. and allied military power to provide protection for liberating areas in northern and southern Iraq, and we should establish and maintain a strong U.S. military presence in the region and be prepared to use that force to protect our vital interests in the Gulf and, if necessary, to help remove Saddam from power.

And that is signed by—and I want everybody to remember these names—Elliot Abrams, William J. Bennett, Jeffrey Bergner, John R. Bolton, Paula Dobriansky, Francis Fukuyama, Robert Kagan, Zalmay Khalilzad, William Kristol, Richard Perle, Peter Rodman, Donald Rumsfeld, William Schneider, Jr., Vin Weber, Paul Wolfowitz, James Woolsey, Robert B. Zoellick. There is a studied school of thought of the best way to secure Israel. We have been going for years back and forth with every particular administration, you can see where we are now.

But in any event, the better way to do it is go right in and establish our predominance in Iraq and then, as they say, and I have different articles here I could refer to, next is Iran and then Syria. And it is the domino theory, and they genuinely believe it. I differ. I think, frankly, we have caused more terrorism than we have gotten rid of. That is my Israel policy. You can't have an Israel policy other than what AIPAC gives you around here. I have followed them mostly in the main, but I have also resisted signing certain letters from time to time, to give the poor President a chance.

I can tell you no President takes office—I don't care whether it is a Republican or a Democrat—that all of a sudden AIPAC will tell him exactly what the policy is, and Senators and members of Congress ought to sign letters. I read those carefully and I have joined in most of them. On some I have held back. I have my own idea and my own policy. I have stated it categorically.

The way to really get peace is not militarily. You cannot kill an idea militarily. I was delighted the other day when General Myers appeared before our Appropriations Subcommittee on Defense and he said that we will not win militarily in Iraq. He didn't say we are going to get defeated militarily but that you can't win militarily in Iraq.

Mr. ALLARD. Will the Senator yield?

Mr. HOLLINGS. Not until I complete this thought. Time is running out on me.

The papers are the ones that pointed out Wolfowitz, Pearle, and Charles Krauthammer were of the Jewish faith. They are the ones who brought all this Semitism in there. I can tell you that right now, I didn't have that in mind. I had my friends in mind and I followed them. We had this in the late 1990s

under President Clinton, when we passed a resolution that we ought to have Saddam removed from power, have a regime change. I was wondering how it went. I had to find my old file—on this Project For The New American Century.

Now, going back to my article: ''every President since 1947 has made a futile attempt to help Israel negotiate peace. But no leadership has surfaced amongst the Palestinians that can make a binding agreement. President Bush realized his chances at negotiation were no better. He came to office imbued with one thought.''

Mr. ALLARD. I wonder if the Senator will yield, preserving his time, for a unanimous consent request to move forward with the judge vote we have at 5:40.

Mr. HOLLINGS. Without losing my right to the floor, I will yield.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. ALLARD. Mr. President, as in executive session, I ask unanimous consent that at 5:30 today the Senate proceed to executive session to consider the following nominations en bloc on today's Executive Calendar: No. 556, the nomination of Raymond Gruender to be U.S. Circuit Judge for the Eighth Circuit; and Calendar No. 557, the nomination of Franklin S. Van Antwerpen, to be U.S. Circuit Judge for the Third Circuit.

I further ask unanimous consent that following 10 minutes of debate, equally divided between the chairman and ranking member of the Judiciary Committee, or their designees, that the Senate proceed to consecutive votes on the confirmation of the nominations, with no further intervening action or debate; further, that following the vote, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I ask that the Senator modify his request so that the statement of the Senator from South Carolina will stop at 5:40, and the rest of the unanimous consent kick in at 5:40, rather than 5:30, so we will be voting at 5:50.

Mr. ALLARD. I am willing to modify it.

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

Mr. HOLLINGS. Mr. President, let me again read from my article:

President Bush came to office imbued with one thought: reelection.

I say that advisedly. I have been up here with eight Presidents. We have had support of all eight Presidents. Yes, I supported the President on this Iraq resolution, but I was misled. There weren't any weapons, or any terrorism, or al-Qaida. This is the reason we went to war. He had one thought in mind, and that was reelection. I say that about President Bush. He is a delightful fella, a wonderful campaigner, but he loves campaigning. You cannot get him in the White House or catch him there, hardly. He doesn't work on these problems at all.

I have worked with all of the Presidents. I know the leadership goes to the White House and tries to work with him. He is interested in one thing, and that is to be out campaigning. So he had one thought in mind, and that was reelection.

Again, let me read: Bush thought tax cuts would hold his crowd together and that spreading democracy in the Mideast to secure Israel would take the Jewish vote from the Democrats.

Is there anything wrong with referring to the Jewish vote? Good gosh, every 1 of us of the 100, with pollsters and all, refer to the Jewish vote. That is not anti-Semitic. It is appreciating them. We campaigned for it.

I just read about President Bush's appearance before the AIPAC. He confirmed his support of the Jewish vote, referring to adopting Ariel Sharon's policy, and the dickens with the 1967 borders, the heck with negotiating the return of refugees, the heck with the settlements he had objected to originally. They had those borders, Resolution No. 242—no, no, President Bush said: I am going along with Sharon, and he was going to get that and he got the wonderful reception he got with the Jewish vote. There is nothing like politicizing or a conspiracy, as my friend from Virginia, Senator ALLEN, says—that it is an anti-Semitic, political, conspiracy statement.

That is not a conspiracy. That is the policy. I didn't like to keep it a secret, maybe; but I can tell you now, I will challenge any 1 of the other 99 Senators to tell us why we are in Iraq, other than what this policy is here. It is an adopted policy, a domino theory of The Project For The New American Century.

Everybody knows it because we want to secure our friend, Israel. If we can get in there and take it in 7 days, as Paul Wolfowitz says, then we would get rid of Saddam, and when we got rid of Saddam, now all they can do is fall back and say: Aren't you getting rid of Saddam?

Let me get to that point. What happens is, they say he is a monster. We continued to give him aid after he gassed his own people and everything else of that kind. George Herbert Walker Bush said in his book All The Best in 1999, never commit American GIs into an unwinnable urban guerrilla war and lose the support of the Arab world, lose their friendship and support. That is a general rephrasing of it.

The point is, my authority is the President's daddy. I want everybody to know that. I don't apologize for this column. I want them to apologize to me for talking about anti-Semitism. They are not getting by with it. I will come down here every day—I have nothing else to do—and we will talk about it and find out what the policy is.

Let me go back to this particular column:

But George Bush, as stated by former Treasury Secretary Paul O'Neill and others, started laying the groundwork to invade Iraq days before the Inauguration.

There is no question, he got a briefing. That was the first thing he wanted out of former Secretary of Defense Bill Cohen. Then the nominee, about to take the oath of office as President of the United States, wanted to be briefed on Iraq. They had this policy in mind coming to town. Mr. President, 9/11 had nothing to do with it, and we all know it now. We have to understand it because that is the only way really to help Israel and get us out of the soup. Everybody is worrying about Iraq. We better worry about Israel because we certainly have put her in terrible jeopardy with this particular initiative.

Without any Iraq connection to 9/11, within weeks President Bush had the Pentagon outlining a plan to invade Iraq. He was determined. President Bush thought taking Iraq would be easy. Wolfowitz said it would take only 7 days. Vice President Cheney believed that we would be greeted as liberators, but Cheney's man, Chalabi, made a mess of de-Baathification of Iraq by dismissing Republican Guard leadership and Sunni leaders who soon joined with the insurgents.

Worst of all, we tried to secure Iraq with too few troops. In 1966 in South Vietnam, with a population of 16 million, General William C. Westmoreland, with 535,000 U.S. troops, was still asking for more troops. In Iraq, with a population of 25 million, General John Abizaid, with only 135,000 troops, can barely secure the troops, much less the country. If the troops are there to fight, there are too few. If they are there to die, there are too many. To secure Iraq we need more troops, at least 100,000 more. The only way to get the United Nations back in Iraq is to make the country secure. Once back, the French, Germans, and others will join with the U.N. to take over.

With President Bush's domino policy in the Mideast gone awry, he can't keep shouting ''Terrorism war.'' Terrorism is a method, not a war. We don't call the Crimean war, with the charge of the light brigade, the cavalry war, or World War II the blitzkrieg war. There is terrorism in Northern Ireland, there is terrorism in India, and in Pakistan. In the Mideast, terrorism is a separate problem, to be defeated by diplomacy and negotiation, not militarily.

Here, might does not make right. Right makes might. Acting militarily we have created more terrorism than we have eliminated.

The title of this article is ''Bush's failed Mideast policy is creating more terrorism, '' and, I could add, jeopardizing the security of Israel.

They say: He talks like a big fan of Israel. I am. I have a 38-year track record. I will never forget some 34 years ago meeting with David Ben-Gurion. He talked about little Israel, less than 3 million at that time in a sea of 100 million.

Let's say Israel has 5 million people there now, but there are 150 million Muslims surrounding it. If you punch the particular buzzer I did with Yitzhak Rabin 1 day down on the Negev to scramble the air force, I think it was 21 seconds they were up in the air, and

in a minute's time, they were outside over Jordan.

Militarily, Israel is a veritable aircraft carrier. You can hardly fly and you are out of the country, and everybody has to understand that. You cannot play the numbers game Sharon plays. He thinks he can do it militarily.

I want to remind you, it was in that 6-day war—the book is ''Six Days of War'' by Michael Oren. Look on page 151, and Major Ariel Sharon says: Look, we are going to decimate the Egyptian army and you will not hear from Egypt again for several generations. And Levi Eshkol, the Prime Minister, on page 152 says: ''Militarily victory decides nothing. The Arabs will still be here.''

That is my theme. I have watched it over the years. You have to learn not to kill together, but to live together. The finest piece I ever read was right in this morning's paper. There is still hope. I refer to an article: ''Israeli Arabs Exalting in a Rare Triumph.''

There are a million Israeli Arabs. They won a soccer match in Tel Aviv. The majority of the team was of Israeli heritage, and they held an Israeli flag, if you can imagine that in the political United States of America. They are living together. Every Prime Minister since David Ben-Gurion has realized that fact: that they have to learn to live together. They all moved, and they almost had it under Ehud Barak and President Clinton. Arafat proved he did not want peace. He did not accept it. That was our one chance.

Unfortunately, rather than working on that one chance and continuing, Ariel Sharon went in their face at Temple Mount, the intifada started, and he has been killing 10 to 1. He plays the numbers game, almost like we had in Vietnam. He thinks he can eliminate by moving the ball some, getting some more settlements, bulldozing a house, but he is creating terrorism.

I had a headline the other day. When I saw it, I showed it to my staff. I said: You all come in here, I want to ask you something. ''Israel plans to destroy more Gaza dwellings.'' You see that headline? I asked staff members: Suppose they bulldoze your daddy's home. Wouldn't you want to cut their throat?

They said: In a New York minute.

How do you create terrorists? Where is the front line in the so-called war on terrorism? I learned the answer recently on a trip I was on with the distinguished chairman of the Appropriations Committee and the chairman of the Armed Services Committee. We talked for over an hour with the King of Jordan. He finally cautioned at the very end, when we stood up, he said: You have to settle this Israel-Palestine question. That is the only way to get on top of this. We went over to Kuwait to the Prime Minister when he got through, he said: You have to settle the Israel-Palestine situation.

I will quote Mr. Musharraf, the President of Pakistan. When we got there, he cautioned if you can settle the Israel-Palestine question, terrorism will disappear around the world.

Then we came in on a Friday evening to make a little courtesy call with the French. The distinguished Senator from Virginia with Lafayette—and I have slept in Lafayette's bed over there in Richmond, VA, and I helped with that particular thing because I believe and remember the French help. I will never forget—everybody is going to the 60th anniversary of D-Day, but I was at the 50th anniversary and we went over to Ste-Mere-Eglise, where a major, who was a Citadel graduate, had broken through the line and saved us from having to leave the beachhead and go back to England. They made a movie of it. A shell burst killed him. They laid him down on their side. He is buried on the side of the chapel.

We went to the services. We had talks there. This little old lady came. She was about 80 years old, walking with a cane. I was listening to the mayor, and she pulled my jacket and she said: Thank you, Yank. If you had not come we would be goose-stepping.

I turned to her and I said, thank you, madam, because if you had not come, we would still be a colony.

The majority of the troops on the field at Yorktown with the surrender of Cornwallis were French troops. We had French troops that helped us get this so-called freedom. All this anti-French stuff, do not give me french fries and everything else, is crazy.

I was proud to appear with the Senator from Virginia. But Chirac, he said, look, we have to have western solidarity. We have to work together now and we have to watch this competition from China in the Far East, and we in the western world have to stick together. He said he wanted to help in Iraq, but he needed a U.N. resolution to cover. He said what we have to do is do something about Israel and Palestine.

I said, what would you do?

He said, I would put a peacekeeping force.

I said, would French troops come?

He said, French troops would come immediately. We would be part of it and we would separate them from killing each other every day.

My position is, and I believe in this particular policy as strongly as I know how, might does not make right, but right makes might. We have lost our evenhanded posture and reputation in the Mideast. We are in worse off shape with Israel, our principal interest in the gulf.

Sharon has not helped us at all. We see him going back and forth. They say, oh, no, it is negotiation. But we are throwing over the United States-Israel policy of some 35 years insofar as negotiating the settlements and the refugees. We are saying forget about all of that, let Sharon keep bulldozing them. Now in the morning paper on the front page one sees the killing of children, they are saying, we are defending Israel. That is the U.S. policy. That is not just Israel's policy.

They are coming in there with U.S. equipment, U.S. gun helicopters, U.S. tanks that are bulldozing. That is our policy. That is the reason for 9/11 and Osama. He said, I do not like American troops in Saudi Arabia, get the infidel out. That is why they went right into that thing. Where do you think we get all this talk about hate America? I do not buy that stuff. I have traveled the world. They love Americans.

Recently we met with the Ambassadors of Germany and France, and Britain in our policy committee and they said the young people are disillusioned. They always look to the United States for the moral position and taking and defending that particular position. They do not look there anymore.

We are losing the terrorism war because we thought we could do it militarily under the domino policy of President Bush, going into Iraq. That is my point. That is not anti-Semite or whatever they say in here about people's faith and ethnicity. I never referred to any faith. I should have added those other names from the Project For The New American Century, but I picked out the names I had quotes for. And for space, I left other things out.

Mr. President, on May 12 of this year, I had printed in the RECORD the article in its entirety.

I diverted from the reading of the article several times, so for the sake of accuracy I wanted the whole article printed.

This particular op-ed piece appeared in the Post and Courier. Never would they have thought, having read it, if it was anti-Semitic, that they would have ever put it in there. Nor would the Knight Ridder newspapers in Columbia, SC. Nor would the Metro Media newspapers in Greenville, SC. But the Anti-Defamation League picked it up and now they have given it to my good friend, Senator ALLEN of Virginia. I have his particular admonition how I am anti-Semitic and I cannot let that stay there.

My staff knew I was coming over and waiting my turn in order to talk under the Pastore rule. I know I am as vitally interested as anybody can be about this issue. Our distinguished colleague from Washington, Senator CANTWELL, knows this subject backward and forward.

The reason I had not known or gotten all fired up is I have been doing some other work and South Carolina has already looked to me for everything at that Savannah River plant. I am on the Energy Appropriations Subcommittee and we have gotten all the money—do not worry about money. This is a policy of nuclear waste disposal, high-level waste, being reclassified under an end-around-end deal of trying to make it low-level waste and, as Senator CANTWELL says, pouring in some sand and concrete on top of it. The scientists say, watch out, the remains in these tanks are 50 percent as deadly and dangerous as the entire tank container.

Back to Saddam, everybody is glad we have gotten rid of Saddam, but we can see what has happened. There is an old saying we learned in World War II that no matter how well the gun is aimed, if the recoil is going to kill the gun crew, you do not fire.

Did this White House and administration ever think of the recoil? It severely injured the gun crew. Yes, ordinarily to get rid of Saddam, like they put a missile on the intelligence head, they could have put a missile on him any time they wanted, but they did not want to do that. They wanted the domino policy to ensue.

No, no, getting rid of Saddam was not worth almost 800 dead GIs and over 3,500 maimed for life. Some say every time we want to criticize the policy, we are weakening the GIs. I am strengthening the GIs. I said let's get enough in there so they can secure themselves. We have 135,000 now. A third of those are guarding the other third, and that means leaving a third, 35,000 or 40,000 troops, running out like a fire drill to any particular trouble and coming back in and eating. I have been there.

You can see it in Rafah. They are building a big old thing like in Kosovo, where we hunker down and act like we are in charge of Kosovo. The Albanians are in charge of Kosovo.

You can't force-feed democracy. It has to come from within. We helped liberate Morocco, Algeria, Tunisia, 60-some years ago, and Morocco, Algeria, Tunisia have not opted for democracy, nor has Libya, nor has Egypt, nor has Lebanon, nor has Syria, nor has Iraq, nor has Iran, nor has Afghanistan, nor has Pakistan, nor has Jordan, nor has Yemen, nor has Aden, nor has Saudi Arabia, nor has the organization of Arab states.

Come on. So we have to go out and not speak sense with respect to policy, and when you want to talk about policy, they say it is anti-Semitic. Well, come on the floor, let's debate it. Because my friend from Virginia admonishes me. Referring to me he says, ''I suggest he should learn from history before making accusations.'' I didn't make any accusations. I stated facts. That is their policy. That is not my policy.

Mind you me, when we went into Iraq, the only people in the world who favored that policy were the people of the United States and the people of Israel. The people of Jordan, Iraq, Britain, Spain, Poland, Italy, Japan, everywhere around the world said you just don't invade a sovereign country no matter how bad the rascal is. We have Kim Jong of North Korea—he has weapons of mass destruction, but we don't do anything there.

Don't give me this about how we saved this and we did this or did that. We have to sort of learn that the front line now is not the Pentagon but the State Department. We have to work through diplomacy. We live in a global economy and a global world. That is only going to come about economically, politically, diplomatically, and by negotiations.

The United States, until this invasion and this domino policy for Israel—don't tell me it is otherwise, about spreading democracy. They know what they are talking about. They are insisting on it. It is not a Jewish policy or a Semite policy. It is their domino policy. That is exactly what it is. But they know how to make you tuck tail and run. Not the Senator from South Carolina. We don't run, we don't win, we are not right, we are wrong a lot of times, but I have thought this out as thoroughly as I know how, and it worries me that here we are.

I said after we got into that thing in Vietnam with the Gulf of Tonkin—I came there at that particular time, in 1966, went to Vietnam when we were under fire three times—actually over into Cambodia before and that kind of thing. We finally came up with McNamara writing a book saying he was wrong.

I'll never forget, McNamara comes out to Allie Richenberg near Saint Albans to get his tennis lesson at 7 o'clock, and Bob Mcnamara turned to Allie and said, ''Allie, what do you think about my book?'' He said, ''It's as bad as your backhand. You should not have written it.''

But we had to wait 20 years for that one, and we killed 58,000 Americans. Now we have killed almost 800, maimed for life thousands of others. Are we going to just continue on?

What would the Senator from South Carolina do if I were king for a day? Yes, I would put the troops in to get security, and I would step up the election. I can tell you right now, I have run for all kind of offices, 20-some statewide offices and campaigns. But don't put me in on that temporary coalition. That fellow, El Baradei, who is running around the United Nations to get a temporary coalition or government to turn power over to on June 30—don't put me in that. I immediately have to repudiate the United States, that I am not a stooge for the United States. We just have our fingers crossed that we can hold law and order so we can have an election. But don't wait until 2005, or December; by September 30, let's get that election going.

Let's realize we are in real trouble. Saudi Arabia is in trouble. Israel is in trouble. The United States is in trouble. I am going to state what I believe to be the fact. In fact, I believe it very strongly. They just are whistling by on account of the pressures that we get politically. Nobody is willing to stand up and say what is going on.

It was a mistake like Vietnam. We got misled with the Gulf of Tonkin, we got misled here, and we are in that quagmire. ''Municipal guerrilla war and a quagmire,'' that says George Herbert Walker Bush. I will end on my authority—President George Herbert Walker Bush said:

> Never commit U.S. troops into an unwinnable urban guerrilla war and turn off the Arab world.

Look in that book of his and you will see exactly what I am talking about. He is not anti-Semitic. He is sensible. He didn't go in.

Yes, Colin Powell, General Powell said if you are going in, let's have enough troops. They tried to do it on the cheap. They were ill advised. My friend Paul Wolfowitz said you will do it in 7 days. Come on. And they let the Republican Guard back into the city of Baghdad and into the Sunni triangle, and the next thing you know, when Chalabi, who has now been demoted or set aside—he did away with their leadership and everything, so they got turned off and they buddied up with the insurgents, and now we have hell on our hands. Everybody knows that.

So it has been ill prepared, ill advised, and ill administered. The entire thing is a mess. Don't give me ''support the troops, support the troops.'' I have been with troops, about 3 years in combat, so don't tell me about troops. I have always supported the troops.

You ask how many Senators have gotten a Woodward Award from the U.S. Army. They don't give that out lightly. I have been with every Secretary of Defense until this one, and I think he is brilliant, but I think he has made a mistake going along with this domino policy. We have it now out on the table, and we will all talk about it, and we will be around and ready to debate it.

I appreciate the colleagues yielding to me. I wish I had all the time to put all these articles in.

I want to thank—and I am going to sit here and support my friend from Washington. She has done a magnificent job stating what the issue is.

It is simply under the auspices of an accelerated disposal plan going around end to reclassify—and it is around end. I had not heard anything about it. I have been handling everything at Savannah River for 30 some years. I called up the South Carolina Department of Health and Environmental Control—DHEC—and they were adamantly opposed and gave me the brief they signed a few weeks ago adamantly opposing it, with the assistant attorney general's name on it. They say this is DHEC policy. I talked to two members of DHEC and they said it was never brought up at their meetings. They do not know anything about it.

So, yes, it is a little rider for one special State that is injurious not only to the State itself—I say that advisedly—but also to the United States.

I yield the floor.

EXECUTIVE SESSION

RAYMOND W. GRUENDER, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER (Mr. COLEMAN). Under the previous order, the Senate will now go into executive session. The clerk will report the nominations.

The legislative clerk read the nominations of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit, and Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There is 15 minutes of debate evenly divided.

Who yields time?

Mr. ALLARD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally counted on both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement personnel, as well as plaintiffs' and defendants' attorneys.

I urge my colleagues to vote for Raymond Gruender.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the Federal bench. An honors graduate of Washington University School of Law, Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney's Office for the Eastern District of Missouri as an Assistant U.S. Attorney in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of the Missouri legal community, including: Senators BOND and TALENT; Edward L. Down, Clinton appointed U.S. Attorney for the Eastern District of Missouri; Lee Lawless, First Assistant Federal Public Defender for the Eastern District of Missouri; Howard Shalowitz, President of the Bar Association of Metropolitan St. Louis; Joseph Mokwa, Chief of Police of City of St. Louis; and Dean Joel Seligman, Washington University in St. Louis School of Law.

In 2000, Mr. Gruender returned to the U.S. Attorney's Office in the Eastern District of Missouri, and specialized in fraud and corruption prosecution. A year later, he was unanimously confirmed as the United States Attorney for the Eastern District of Missouri, where he manages both the civil and criminal litigation handled by the office, as well as overseeing the administration of the office, which includes 60 attorneys. Mr. Gruender and his office have been active in helping to reduce violent crime in the St. Louis area. He has also been a leader in strengthening our nation's readiness in the war on terror.

Mr. Gruender also believes in giving back to his community, and in addition to devoting a significant amount of his career to public service, he has been very active in civic affairs. He has volunteered his time on domestic violence issues, serving at various times as President of the Board of Directors, Vice President, and Secretary of Alternatives to Living in Violent Environments, ALIVE. ALIVE is a not-for-profit organization dedicated to eliminating domestic violence. He also serves as a volunteer on the Allocations Committee of the Variety Club of St. Louis, which raises and distributes funds to disadvantaged and disabled children.

Raymond W. Gruender III has a fine background, which will serve him well as a circuit court judge. He will be a terrific addition to the Court, and I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. Mr. President, earlier this week, we were able to obtain a firm commitment from the White House that there would be no further judicial recess appointments for the remainder of this presidential term. That undertaking led immediately and directly to the Senate vitiating a cloture vote and proceeding to confirm the nomination of Marcia Cooke to the federal bench in Florida. Today we debate and vote on the nomination of Raymond Gruender to the Eighth Circuit.

Thus, despite the pessimism expressed by some last week, I continued working to conclude an arrangement between the White House and the Senate that would allow additional progress on judicial confirmations. Working with Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House chief of staff Andy Card, we were able to reach an agreement on Tuesday. I again commend our two leaders. I have been working with Senator DASCHLE for months, as well as with the White House, to find a way out of the impasse in judicial confirmations. Senator FRIST and I have spoken at length about this, and he has been working on that, too. I was delighted to see the meeting of Senator DASCHLE, Senator FRIST, and Mr. Card finally take place this week. Most importantly, I was pleased that the White House agreed to no more recess appointments of judges.

I think we have demonstrated our good faith. In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees to lifetime positions on the federal bench. And the Republicans, during the 23 months that they have been in charge of the Senate, have now confirmed another 74. With the consideration of the Gruender nomination today, that total reaches 75.

This is the 75th confirmation for 2003 and 2004, of the 108th Congress. That matches the total for the entire two-year 1995–1996 period in which Republicans controlled the 104th Congress and exceeds the total for the entire two-year 1999–2000 period in which Republicans controlled the 106th Congress. Of course in those years Senate Republicans were reviewing President Clinton's judicial nominees. Further, with 175 confirmations, we will have matched the total confirmation for the most recent 4-year Presidential term 1997–2000.

It is significant that this is the first circuit court nomination the Senate will have considered this Presidential election year. The last time a President ran for reelection was 1996. During that session, with the Republican majority controlling the Senate agenda not a single circuit court nominee was considered. Accordingly, when the Senate acts to confirm the first circuit court nominee this year, we will have bested the total for the entire 1996 session.

I am pleased that the Senate has received assurances from the White House that the President will not further abuse the recess appointment

power by making recess appointments during the remainder of his presidential term. It was the White House's refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President's recess appointments to the federal courts that complicated our efforts to reach an agreement regarding votes on judicial nominees over the past few months. That is demonstrated by the prompt vote and confirmation of Judge Cooke Tuesday afternoon. I was pleased to be able to help facilitate the end of that impasse.

And now we are set to vote on another candidate, the nomination of Raymond Gruender to the U.S. Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week's agreement as ''noncontroversial,'' they in fact include a number who will require debate and they will each require a roll call vote

Unfortunately, Mr. Gruender is another nominee whose record raises concerns, just as have the records of far too many of President Bush's judicial nominees. Mr. Gruender, though only 40 years old, has been a member of the Federalist Society since 1988 and has played a lead role in many national Republican campaigns. For the past two years, Mr. Gruender has served as the U.S. Attorney for the Eastern District of Missouri. In this capacity, he has been a vocal defender of Attorney General John Ashcroft's aggressive and controversial tactics.

He has also been critical of a city that passed a resolution reaffirming the importance of civil liberties in the fight against terrorism. He claimed that the resolution, which aimed to protect freedom of speech, assembly, privacy and due process, is ''putting lives in jeopardy and increasing the chances for terrorists to be successful.'' Mr. Gruender stood by these statements and his criticisms of the resolution at his hearing.

Despite his activities applying the PATRIOT Act as a U.S. Attorney and his public pronouncements about its provisions, Mr. Gruender stated in his answers to my written questions that he has ''not formed or expressed any opinions with respect to the constitutionality of any provisions of the PATRIOT Act'' and would, if confirmed, protect each citizen's civil rights and civil liberties.

I do hope that, if confirmed, Mr. Gruender will be a person of his word. I hope he will be fair and open-minded, and listen to all arguments involved in such cases. I hope he would not seek to decide cases in accordance with his partisan or personal beliefs rather than in accordance with the law. I also must note that, while he was candid about some of his activities, Mr. Gruender failed to directly answer several questions that I asked him in writing after his hearing, questions that would enable me to fully evaluate his qualifications for a lifetime appointment on the federal bench.

Just as a nominee last year attempted to stonewall Committee Members by not answering questions in a forthright manner, so Mr. Gruender avoided answering some of my questions by claiming that he could not express his views on the issues without a complete factual record and the benefit of the ''deliberative process.'' For example, Mr. Gruender refused to express his opinion about Congress's power under the Commerce Clause, Section 5 of the Fourteenth Amendment, or the 10th or 11th Amendments. This is a timid, evasive and useless response. And many other circuit court nominees of this President have answered the same questions.

Mr. Gruender does, however, have the support of both of his home-State Senators and has served both as prosecutor and a defense attorney.

I am hopeful that he will be open-minded on the bench and will act as he says he will, that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

For the last three and one-half years, I have urged President Bush to work with us. Our proceeding today on this nomination demonstrates our going the extra mile.

I would note that President Clinton's nomination of Bonnie Campbell to this court was blocked—by a secret Republican hold—from ever getting Committee or Senate consideration. By contrast, the Senate has already confirmed four of President Bush's nominees to this circuit:—William Riley, Michael Melloy, and Lavenski Smith were confirmed while Democrats held the majority, and, last year, Steven Colloton was confirmed to this court, as well. Mr. Gruender makes the fifth.

With his confirmation, Republican appointees on the Eighth Circuit Court of Appeals will outnumber Democratic appointees by four to one. There will be eight active Republican-appointed judges and only two active Democratic-appointed judges. And there is one more vacancy on this court which President Bush intends to fill with another conservative nominee.

I would note for my friends on the other side of the aisle—who consistently rebuke the Ninth Circuit Court of Appeals as being ''too liberal'' because 60 percent of the judges are Democratic appointees—that the scales are tipped much farther the other way on the Eighth Circuit. With Democratic cooperation in confirming five of President Bush's nominees to the Eighth Circuit, Republican appointees now occupy 80 percent of the authorized seats on that court.

I congratulate Mr. Gruender and his family on his confirmation today.

Mr. TALENT. Mr. President, United States Attorney Ray Gruender has had a distinguished career as a public servant and practicing attorney. He is an outstanding and highly qualified candidate as evidenced by his professional and academic credentials.

From humble beginnings, Mr. Gruender has risen to the top of the legal profession. Neither of his parents graduated from high school; his father painted houses; his mother worked in a factory as a bookbinder and is now a prison guard. He has worked since age 10 with his father and he continued to work all through school.

Mr. Gruender obtained three degrees from Washington University in less than 6 years, all while working and paying his own way through school. By 1987, he had obtained Bachelor of Science in Business Administration, Master of Business Administration and Juris Doctoris degrees. Not only did he work twenty hours per week during the 6 years in which he obtained these degrees, but he also ranked near the top of his class in each program. In law school, Mr. Gruender served on the Washington University Law Quarterly and is a member of The Order of the Coif. In December 2003, he was awarded an honorary Doctor of Laws degree by William Woods University in Fulton, Missouri.

Since May 1, 2001, Ray Gruender has served as the United States Attorney for the Easter District of Missouri. As United States Attorney he oversees an office of 60 Assistant United States Attorneys actively engaged in both civil and criminal matters. During his tenure, the number of Federal firearms prosecutions in his district has increased dramatically. In 2003, the City of St. Louis experienced 69 homicides, the first time it had fewer than 100 homicides in more than 40 years.

Prior to serving as the United States Attorney, Mr. Gruender served as an Assistant United States Attorney—AUSA—between 1990 and 1994 and again between 2000 and 2001. As an AUSA, he specialized in fraud and public corruption matters. He was one of the AUSAs who handled the Second Injury Fund prosecutions involving several lawyers, physicians and an administrative law judge who were defrauding Missouri's workers' compensation system.

In addition to his experience as a Federal prosecutor, Mr. Gruender has spent 9 years in the private practice of law. Between 1987 and 1990, he was an associate with the large St. Louis law firm of Lewis, Rice and Fingersh. Between 1994 and 2000, he as a partner with Thompson Coburn, LLP, another large Missouri firm. He has represented both plaintiffs and defendants in a broad array of civil matters such as admiralty, antitrust, contracts, employment, securities, fraud, banking and various torts claims.

He is a member of the Missouri and Illinois bars, the Bar Association of Metropolitan St. Louis, and has been a member of the Eastern District of Missouri's Criminal Justice Act Lead Counsel Panel, making himself available to accept criminal appointments.

Mr. Gruender also has been active in civil affairs. His numerous civic contributions include serving as a volunteer on the Allocations Committee of the Variety Club of St. Louis to help raise and distribute funds to disadvantaged and disabled children in the St. Louis area. He also served on the Board of Directors—including as board president of—ALIVE—Alternatives to Living in Violent Environments—a not-for-profit entity dedicated to eliminating domestic violence and helping its victims.

I urge all of my colleagues to vote to confirm Raymond Gruender, of Missouri, to be U.S. Circuit Judge for the Eighth Circuit.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. REID. Mr. President, I yield time for the minority on the judges matter.

The PRESIDING OFFICER. Without objection, all time is yielded.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that there be 4 minutes equally divided between the two votes.

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

Mrs. HUTCHISON. Mr. President, have the yeas and nays been asked for?

The PRESIDING OFFICER. They have not.

Mrs. HUTCHISON. I ask for the yeas and nays on the first vote.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. MCCONNELL. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

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

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 102 Ex.]

YEAS—97

Akaka	Biden	Burns
Alexander	Bingaman	Byrd
Allard	Bond	Campbell
Allen	Boxer	Cantwell
Baucus	Breaux	Carper
Bayh	Brownback	Chafee
Bennett	Bunning	Chambliss
Clinton	Grassley	Murray
Cochran	Gregg	Nelson (FL)
Coleman	Hagel	Nelson (NE)
Collins	Hatch	Nickles
Conrad	Hollings	Pryor
Cornyn	Hutchison	Reed
Corzine	Inhofe	Reid
Craig	Inouye	Roberts
Crapo	Jeffords	Rockefeller
Daschle	Johnson	Santorum
Dayton	Kennedy	Sarbanes
DeWine	Kohl	Schumer
Dodd	Kyl	Sessions
Dole	Landrieu	Shelby
Domenici	Lautenberg	Smith
Dorgan	Leahy	Snowe
Durbin	Levin	Specter
Edwards	Lieberman	Stabenow
Ensign	Lincoln	Stevens
Enzi	Lott	Sununu
Feingold	Lugar	Talent
Feinstein	McCain	Thomas
Fitzgerald	McConnell	Voinovich
Frist	Mikulski	Wyden
Graham (FL)	Miller	
Graham (SC)	Murkowski	

NAYS—1

Harkin

NOT VOTING—2

Kerry Warner

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the nominee for confirmation to the Court of Appeals for the Third Circuit, Franklin Van Antwerpen, has a very distinguished academic record. He has been on the bench for 25 years, 12 years on the State court bench in Northampton County and 13 years on the U.S. District Court for the Eastern District of Pennsylvania. I thank my colleagues, the leaders, and the chairman and ranking member of the Judiciary Committee for working out the impasse. He will be an excellent judge for the Third Circuit.

I yield time to my distinguished colleagues.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I add my congratulations to Judge Van Antwerpen. He has been an excellent public servant and distinguished jurist and will make an excellent contribution to the Third Circuit.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Franklin S. Van Antwerpen, who has been nominated to the U.S. Court of Appeals for the Third Circuit.

Judge Van Antwerpen is truly an impressive man and has the enthusiastic support of both Pennsylvania senators, along with a unanimous ''Well Qualified'' ABA rating.

Judge Van Antwerpen has exceptional qualifications for the Federal appellate bench. After graduation from Temple University School of Law in 1967, he worked as an attorney at the Hazeltine Corporation and served as Chief Counsel of the Northampton Legal Aid Society. He then spent 9 years in private practice, representing both plaintiffs and defendants in general litigation matters, with a particular specialization in municipal law.

In 1979, Judge Van Antwerpen commenced a 25-year career in public service when he joined the Court of Common Pleas of Northampton County. He served in this position until 1987, when President Reagan appointed him United States District Judge for the Eastern District of Pennsylvania, the position he holds today.

Judge Van Antwerpen has a fine background which will serve him well as a circuit court judge. He will be a terrific addition to the court, and I urge my colleagues to join me in supporting his nomination.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today, in addition to voting on the nomination of Raymond Gruender, we vote to confirm another circuit court nominee, Judge Franklin Van Antwerpen to the United States Court of Appeals for the Third Circuit. A Federal District Court judge since he was appointed by President Reagan in 1987, Judge Van Antwerpen comes to the Senate floor strongly supported by the Senior Senator from Pennsylvania, who I know is eager to see him confirmed.

Today's confirmation will make the 76th judge confirmed this year alone and the 176th judicial nominee to be confirmed for this President. With 76 judicial confirmations in just a little more than 16 months, the Senate has now confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total for the last 2 years of the Clinton administration, when Republicans held the Senate. In fact, with 176 total confirmations for President Bush in just 3½ years, the Senate has confirmed more lifetime appointees for this president than were allowed to be confirmed in President Clinton's entire second term, the most recent 4-year presidential term. We have already surpassed the number of judicial confirmations won by President Reagan in his entire first term in office.

The confirmation of Judge Van Antwerpen also marks the second circuit court nominee confirmed for President Bush this year, which is double the number of circuit court nominees confirmed in all of 1996, the last time a president was running for reelection and Republicans refused to allow a single circuit court nominee of President Clinton to be confirmed all year. Today we confirm the 32nd circuit court nominee of President Bush, which is more circuit court confirmations than in all 4 years of President Clinton's first term in the White House.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 16 of

President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State except California.

With this confirmation, President Bush's nominees will make up 16 of the 41 active Federal circuit and district court judges for Pennsylvania—that is more than one third of the Pennsylvania Federal bench. With the additional four Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Although Republicans now decry Democratic filibusters of a mere handful of the most extreme nominees, Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Mr. SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were ten nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite how well-qualified these nominees were, many of their nominations sat pending before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, the Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts ''present Republicans with an opportunity to shape the judicial makeup of the court for years to come.''

Democratic support for the confirmation of Franklin Van Antwerpen is yet another example of our extraordinary cooperation despite an uncompromising White House and the record of how President Clinton's Pennsylvania nominees fared under Republican control in the Senate. In contrast to many of President Bush's nominees, Judge Van Antwerpen comes to us with a distinguished and widely acclaimed career on the bench—both on the State and Federal levels. He was rated unanimously well-qualified by the American Bar Association and has the respect of his peers on the bench and of the attorneys who appear before him. He is the kind of nominee this President and my Republican colleagues should be looking for as we fulfill our constitutional duty of appointing members to the Federal judiciary—an independent branch of the government.

I congratulate Judge Van Antwerpen and his family on his confirmation today.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—96

Akaka	DeWine	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lott
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Ensign	Murkowski
Bingaman	Enzi	Murray
Bond	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Santorum
Carper	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NOT VOTING—4

Hutchison	Miller
Kerry	Sessions

The nomination was confirmed.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I join with my colleague in requesting Senators to send in as many amendments as they possibly can. The Senator from Michigan and I will be here tomorrow in hopes that we can clear amendments. There are days when clearances could be facilitated. I think tomorrow is one of those days.

I say to my good colleague, the Senator from Michigan, Mr. LEVIN, am I correct in that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I say to my good friend from Virginia, he is absolutely not only correct but I would join his plea to our colleagues that we make good use of time tomorrow. If Senators are not here, their staff can deliver amendments so at least we can begin to consider them. We can make good use of tomorrow so when we come back we will have to use up less of the Senate's time.

So I join the chairman's plea that Members on both sides of the aisle, who have not filed amendments or given our staffs amendments, do that tomorrow. Let us try to work through some of them. We could clear them tomorrow and, even if we do not have contested amendments tomorrow, we could make some progress on this bill.

Mr. WARNER. I thank my colleague.

The distinguished Senator from Nevada, the Democratic whip, pointed out that he has a count of over 100-odd amendments with which we have to deal. So there is a formidable task ahead of us.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. The reason I speak as we close out this evening is to comment on a few things about the amendment pending before the Senate in regard to an effort to do two things: to make sure the $350 million that is available for the Department of Energy to provide cleanup in the States of Washington, Idaho, and South Carolina can move forward without any strings attached, and to ratify an agreement that the State of South Carolina has entered into with the Department of Energy concerning 51 tanks containing high-level waste.

I really do very much like my colleague from Washington, Senator CANTWELL, but we dramatically disagree on this. I cannot emphasize how dramatically we do disagree about what is at stake and what we are trying to accomplish.

My senior Senator from South Carolina could not have been possibly better to me since I have been in the Senate almost 18 months now. He is going through some accusations that I find not consistent with who Senator HOLLINGS is. I am not going to dwell on that, but I believe that most of us who

know Senator HOLLINGS very well believe he gives everybody the same treatment: Really hard. He is a fair man. He is a good man. We have some disagreement about how to handle the amendment before us, but I did not come to this issue without some time, attention, and thought to the matter.

Well over a year I have been involved with my State working with the Department of Energy to make sure that the 51 tanks that have high-level waste as a result of the cold war legacy material at the Savannah River site is cleaned up in a way that is environmentally sound for South Carolina, good for the taxpayer, and it makes sense.

I have a letter from the Governor of South Carolina. Contrary to what Senator HOLLINGS suggested, the Governor of South Carolina not only knows what we are doing, he encourages what we are doing. I received a letter to that effect. I ask unanimous consent that the letter be printed in the RECORD.

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

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, SC, May 20, 2004.

Hon. LINDSEY O. GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: I am writing in support Section 3116, Defense Site Acceleration Completion in the FY 2005 Department of Defense Authorization bill, S. 2400. More specifically, this section of the bill will allow for an accelerated clean up of the Savannah River Site in South Carolina.

This Administration is concerned about the prospect of long-term storage of radioactive waste in aging tanks at the Savannah River Site. Under the current Nuclear Waste Policy Act, the cleanup process could leave the waste in those storage tanks for an additional 30 years.

However, the amendment allows the U.S. Department of Energy, working with the South Carolina Department of Health and Environmental Control, to move more quickly to clean up the Savannah River Site. In fact, the estimated cleanup time will be reduced by 23 years, at a savings of $16 billion to the taxpayers.

Most important is ensuring that the State of South Carolina will be able to retain an oversight role in the cleanup process. According to analysis by the South Carolina Department of Health and Environmental Control, the state's environmental regulatory agency, the clean up process will still require an equal partnership with the State.

As you move through the legislative process, we urge you and your colleagues to retain two very important goals for South Carolina: 1. allow for a more accelerated clean up process, and 2. provide strong language to protect the State's sovereignty within the process of accelerated cleanup.

Thank you for your leadership in the United States Senate. I look forward to working with you on this and many other matters of importance to our State.

Sincerely,

MARK SANFORD.

Mr. GRAHAM of South Carolina. I am going to read from it. The question Senator HOLLINGS raised was, well, if our Governor knew about this he would not agree to this because he is a good environmentalist.

We will agree on this: Our Governor is a good environmentalist. He has been a great Governor trying to change the culture of the way we do business in South Carolina. I have been working with him for well over a year to make sure our State gets those tanks cleaned up in our lifetime and we do not have to worry about ground water leakage.

The folks in Washington have a real problem on their hands, and I want to help them. The people in Idaho have problems on their hands, and I want to help them. I do not think they are being very responsible in terms of how we are dealing with each other's problems.

Here is a chronology of what has been going on in these three States. Idaho, South Carolina, and Washington have been separately negotiating with the Department of Energy about trying to agree on standards in their States to remediate the high-level waste that is left over from the cold war. Washington has a particular problem where they have tanks that are leaking into the ground water. That needs to be fixed sooner rather than later.

The question is, What is clean? The question is, Are we going to allow South Carolina, Idaho, and Washington to work with the Department of Energy to take care of their specific needs and specific problems in an environmentally sound manner or are we going to give one group a veto power over everybody else?

I hope we do not. January 26, 2004, Congressman HASTINGS and Senators MURRAY and CANTWELL sent a letter to Governor Locke and Secretary Abraham asking them to work together to resolve the ongoing dispute pertaining to waste classification.

On February 2, the deputy secretary and Governor Locke connected. Governor Locke indicated he would designate someone to enter into a discussion on behalf of the State of Washington.

That has been going on in South Carolina far before January 26. It is going on in Idaho. About 8 or 9 years ago Idaho reached agreement about certain aspects of cleaning up of the Idaho sites. Each site has a different problem and it is working with DOE in a way that is good for everyone, the State and at the Federal level, to clean up these sites.

The reason we are in court in Idaho is DOE unilaterally issued an order that gave them the authority to set the cleanup standards without consulting with the States. They were trying to change the game or the agreement Idaho had with DOE, and Idaho sued and we—South Carolina and Washington—joined as a friend of the court, saying we will not sit on the sidelines and watch the Department of Energy have the unilateral right to set cleanup standards. That is what we agree upon.

The amendment I have before the Senate does two important things. It does not allow the Department of Defense to withhold funds to Idaho and Washington unless they reach a similar agreement with South Carolina. It does not make what is going on in South Carolina a Presidential event, in terms of how it affects other States. It limits what is going on in South Carolina to South Carolina. It does not disadvantage Washington or Idaho. They have the right, the obligation to enter into an agreement, if any, with DOE. What we are doing in South Carolina only affects South Carolina. I will tell you in a moment what people in South Carolina who are in charge of our environmental needs say about this agreement. I will read the letter from the Governor here in a moment.

The Department of State, the Department of Energy, and the State of Washington, along with the State of Idaho, exchanged drafts and held conversations between January and April. There is a lot of paperwork out there that shows Idaho and Washington have been trying to do the same thing we have been doing in South Carolina. Here is the difference. We reached an agreement South Carolina likes that will get our tanks cleaned up in an environmentally sound manner. And listen to this, it allows the tanks to be cleaned up, remediated, and closed 23 years ahead of schedule, and it saves $16 billion to the American taxpayer.

I hope Washington and Idaho can get there. If they ever do get there, if they ever do reach an agreement with the Department of Energy where the Governor says I like it, where the environmental regulators say I like it, where the Nuclear Regulatory Commission says this is waste incidental to reprocessing, that this can be done in a way that is environmentally sound—I hope I will help, not stand in the way.

So much was said that is so wrong about this issue. To my two friends from Idaho, you have taken some political abuse here that is so far from the truth that it is mind-boggling. What Senators CRAPO and CRAIG have been doing is they have been working with me, in conjunction with all three States, to make sure they get the money they are entitled to regardless of what we do in South Carolina, and they have been kind enough to work with me to make sure my State's agreement can go forward. We are doing nothing to prejudice the lawsuit of the State of Idaho or their ability to reach an independent agreement. I can assure you, this is not blindsiding anybody because there is paperwork from January all the way through to recent months between Idaho and Washington, talking with DOE about trying to find an agreement.

On February 25, 2004, Jessie Roberson, the Assistant Secretary for Energy for Environmental Management came before Senator ALLARD in a hearing and talked about this extensively. He was asked numerous questions.

I ask unanimous consent to have an excerpt of that hearing printed in the RECORD.

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

TRANSCRIPT ON WASTE INCIDENTAL TO REPROCESSING, STRATEGIC FORCES SUBCOMMITTEE HEARING, FEBRUARY 25, 2004

QUESTIONS BY SENATOR WAYNE ALLARD TO MS. JESSIE ROBERSON, ASSISTANT SECRETARY OF ENERGY FOR ENVIRONMENTAL MANAGEMENT

ALLARD: Well, thank you very much for your participation. It's invaluable to this committee.

I'm going to be referring in my questioning to WIR, which stands for Waste Incidental Reprocessing. And I think it would behoove the committee to hear, Secretary Roberson, you summarize what the WIR issue is.

ROBERSON: Thank you, Chairman Allard. Thank you, Senator, as well.

Clean-up of tank waste at Hanford, Idaho, and Savannah River represents the greatest risk-reduction effort in the department's entire clean-up program.

ALLARD: And this all falls under Waste Incidental Reprocessing, is that correct?

ROBERSON: Absolutely.

ALLARD: Okay.

ROBERSON: And I'll explain what portion of the program that specifically applies to.

ALLARD: Very good.

ROBERSON: Okay, we have planned at these three sites to clean up tank waste, plans agreed to with our host states and that the NRC had also carefully reviewed. At each site, our plans acknowledge we would remove as much tank waste as we could. We would separate the tank waste into two factions.

The first is a high-activity faction containing over 95 percent of the radioactivity, which we would classify as high-level waste and treat and dispose of in the repository for spent fuel and high-level waste called for by the Nuclear Waste Policy Act.

And then a low-activity faction, which we would classify as low-level waste, incidental to reprocessing and, depending on its characteristics, treat and dispose of in an appropriate disposal facility for such material.

We would then determine whether we could demonstrate that disposing of a small amount of residues remaining in the tank, generally around one percent of the original volume, by immobilizing it in place and determine—to ensure that it would be comparable to the public health and safety requirements for disposal of low-level waste in a near-surface disposal facility. If it would, our plans were to classify the residues as low-level waste, incidental to reprocessing, to immobilize them in the tank and close the tanks with these residues in place.

A key element of these plans is the classification of the tank waste.

The problem we have encountered is that in July of 2003, an Idaho district court struck down the waste incident to reprocessing portion of DOE Order 435.1, the DOE order addressing how DOE and its contractors classify waste under the Atomic Energy Act. As a result, we now face uncertainty in implementing the very plans our host states had agreed made technical sense.

The classification of this waste is key to determining how to dispose of it. Therefore, if we're unable to resolve this issue regarding waste incidental to reprocessing, we face leaving these tank wastes in place far longer than we and our host states had anticipated. In fact, such delay would likely create more serious health and safety risk to workers and members of the public by leaving the waste in tanks longer and risking leaks to ground water.

ALLARD: Madam Secretary, why do you have to leave any of the waste residues behind?

ROBERSON: Mr. Chairman, let me just briefly describe the size of these tanks and the nature of the waste removal in question. Each tank can hold as much as 1.3 million gallons of liquid waste. At Hanford, for example, the tanks are 75 feet in diameter, and the tanks are of differing shapes. Some are concave, which means they don't have a flat bottom.

ALLARD: I guess that's about the size of this room . . . .

(CROSSTALK)

ROBERSON: Under the tri-party agreement at Hanford between DOE, Washington state and EPA, which governs the clean-up at that site, the goal is that we retrieve 99 percent of the tank waste. If all of the remaining waste were on the bottom of the tank, it would be just under one inch thick.

Because of radiological concerns with exposure for workers, tank waste removal must be done remotely. In addition, these tanks usually sit below 10 feet of soil cover. Our retrieval equipment must fit into openings two inches to two feet wide. And tank structures are not designed to support heavy loads for which equipment must be deployed to do the tank cleaning. So it is not a simple task to scrape the last remaining tank residues from a tank.

Further, much of the waste residues are expected to have a stiff consistency. Most removal techniques require directing pressurized water streams at the remaining waste to immobilize it and to move it to a location which can be pumped.

ROBERSON: We have spent over 10 years working on technologies to improve removal opportunities of the waste from these tanks.

Finally, many of the tanks are over 40 years old. And a number of them have known leak sites, requiring us to exercise great care to preclude water leaking from the tank.

As I said, DOE spent tens of millions of dollars exploring how to get as much residual waste as possible out of the tanks.

ALLARD: What is the material you plan to leave in the tanks?

ROBERSON: We think the residues, when stabilized, are appropriately considered low-level waste, suitable for shallow land burial. Analysis will be performed to ensure that they meet performance objectives established by DOE and the NRC for low-level waste performance objectives.

In fact, that is what the order that was struck down by the judge's ruling required.

ALLARD: Now, shouldn't the waste characteristics and the risks they pose be what matters in terms of safe disposal rather than the process that created the waste?

ROBERSON: Yes, Mr. Chairman, we believe so. And we believe that that is the philosophy behind the clean-up plans in place for those sites.

ALLARD: And how much more than your current estimates might this cost the American taxpayers?

ROBERSON: Our preliminary assessment was that it would cost as much as $50 billion more over the life-cycle of the department's clean-up program and extend that life-cycle by decades to have to process all of our tank waste as high-level waste for disposal in a geologic repository, including exhuming the tanks themselves, cutting them up and packaging them for disposal.

ALLARD: So what is the risk if you have to do that?

ROBERSON: Clearly, the risk to workers, and frankly to the environment, is much larger if we have to exhume tanks. Given that we cannot proceed with our clean-up plans that were based on our waste classification order, we risk leaving waste in tanks much longer than we had planned right now.

We also add to environmental risk by the need to dispose of the large amounts of metals resulting from the almost 250 large tanks and the associated equipment. Our analysis thus far indicates that we would increase worker exposure 10 fold. We would increase costs 10 fold and achieve no meaningful improvement in environmental protection.

ALLARD: So I don't see what the rational benefit is to the American taxpayer from the department having to implement the Idaho district court decision.

ROBERSON: Frankly, Senator, we don't see it either, which is why we are pursuing this. Rather than accelerating clean-up of tank waste in agreement with our host states, we face stopping much of that work.

ALLARD: What is your plan for resolving this WIR issue:

ROBERSON: Accelerated clean up of tank waste is a top priority for the entire department and the states that host our facilities. As pointed out in the General Accounting Office report completed last year, the WIR, waste incidental to reprocessing issue, poses a significant vulnerability for the department.

Consistent with both the GAO recommendations to seek legislative clarification regarding DOE's authority to classify tank waste and with the request by the House Oversight and Investigations Subcommittee last year, we proposed draft legislation to Congress that would clarify our authority for managing such waste.

We have since held discussions with affected states over the impact the Idaho district court decision had on our activities in Hanford, Idaho, and Savannah River, in order to seek to address issues they have raised about our proposed legislative approach.

In addition, we've just filed our opening brief in our appeal of the Idaho court decision to continue our litigation efforts to resolve the WIR issue. Without timely resolution to this issue, not only could we be unable to implement our clean-up plans, but DOE also could be forced to realign its resources across the complex in a manner that would significantly distort the department's clean-up and other priorities.

ALLARD: What about the $350 million, and what does it take to get that money released?

ROBERSON: The Department's fiscal year 2005 budget request includes $350 million in a high-level waste proposal that reflects the need to satisfactorily resolve this issue to support clean-up. These funds will be requested only to the extent that legal uncertainties concerning disposition of these wastes are resolved.

Until we can resolve the legal uncertainties related to WIR, it does not make sense for us to proceed with projects that prepare tank waste for disposition as other than high-level waste destined for deep geologic depository.

ALLARD: I want to thank you for your response.

Mr. GRAHAM of South Carolina. There was another Energy and Water hearing where the same topic was brought before the Congress. The topic is, how are you doing with your efforts to reach agreements with the three States in question to find cleanup standards they can agree to that are environmentally sound, that will allow things to go forward in a more expeditious manner?

The truth is, we have spent billions of dollars talking about cleaning up and we have done nothing but let tanks leak and have waste stay around for years and decades. Now we have a new model. Now we have new money, $350

million of new dollars, and we are using commonsense approaches to cleanup.

What are we trying to do in South Carolina? If I can explain very quickly. I am not a scientist, but I do have fairly good common sense. The 51 tanks that have high-level waste, those tanks will be cleaned up. The liquid in those tanks will be converted to glass logs, it is called vitrification, and that will be sent to Yucca Mountain.

What we are trying to do is clean these tanks up in a manner consistent with safety for South Carolina. The amendment says no tank can be closed unless the State of South Carolina issues a closure permit. The letter from my Governor says, not only am I aware of what you are doing, Senator GRAHAM, I support it because it will allow the tanks to be closed up 23 years ahead of schedule, it will save money, and we don't have to worry about tanks deteriorating.

The plan is to take all of the liquid out and the film on the bottom, which will be 1 to 1.5 inches, treated with concrete and other materials and the tank will be closed. To get that 1 to 1.5 inches out of the bottom of that tank will cost $16 billion and take 23 additional years and put people's lives at risk for no good reason, no good environmental reason.

Every State is trying to define what is clean for their State. Washington is trying to do the same thing. Maybe they will want half an inch. I don't know what they want. Idaho is trying to do the same thing. We have done it and I have a Nuclear Regulatory Commission report that says what is left in that tank after treatment is waste incidental to reprocessing, not high-level waste.

The people in my State who regulate the environment have sent a letter saying we want this agreement because we have final say over where you close the tank and the standards we have negotiated we think are good for South Carolina. The only reason we are having this argument is they don't want one State to go—I guess some groups want to have the leverage of all three States to get standards they believe are better than those by the South Carolina folks who regulate our environment, and they are trying to use some standard that may not be necessary for Idaho and South Carolina. We don't have the same problems they do in Washington.

I will stand behind any Senator from Washington to make sure DOE doesn't run over them. I will stand behind any Senator from Idaho to make sure they can negotiate on their own terms. I am asking this body to approve an agreement that is environmentally sound, fiscally responsible, that affects South Carolina, and is what all three States are trying to achieve.

I have had printed in the RECORD the letter from my Governor. I have had printed the study from the Nuclear Regulatory Commission. I ask unanimous consent to have printed the letter from the Department of Health and Environment Control in South Carolina, saying this is good for the State, they retain control over the tanks, and this is environmentally sound.

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

JUNE 30, 2000.

MR. ROY J. SCHEPENS,
Assistant Manager for High-Level Waste, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC.

SAVANNAH RIVER SITE HIGH LEVEL WASTE TANK CLOSURE: CLASSIFICATION OF RESIDUAL WASTE AS INCIDENTAL

DEAR MR. SCHEPENS: The U.S. Nuclear Regulatory Commission (NRC) has completed the review of the tank closure methodology for the high-level waste (HLW) tanks at the Savannah River Site (SRS). Under the terms and conditions of the Department of Energy (DOE)/NRC Memorandum of Understanding and the DOE/NRC Interagency Agreement, both dated July 9, 1997, the NRC is acting in an advisory capacity and is not providing regulatory approval. The focus of the review was whether or not the residual waste left in the HLW tanks, after cleaning, could be labeled as incidental waste. The criteria for incidental waste were approved by the Commission in the Staff Requirements Memorandum (SRM) dated February 16, 1993, in response to SECY–92–391, ''Denial of PRM 60–4—Petition for Rulemaking from the States of Washington and Oregon Regarding Classification of Radioactive Waste at Hanford,'' and described in the March 2, 1993, letter from R. Bernero, NRC, to J. Lytle, DOE. The review focused on DOE's ''Regulatory Basis for Incidental Waste Classification at the Savannah River Site High-Level Waste Tank Farms,'' ''High-Level Waste Tank Closure Program Plan,'' ''Environmental Radiological Analysis, Fate and Transport Modeling of Residual Contaminants and Human Health Impacts from the F-Area High-Level Waste Tank Farm,'' ''Industrial Wastewater Closure Module for the High-Level Waste Tank 17 System,'' and ''Industrial Wastewater Closure Module for the High-Level Waste Tank 20 System.'' It also included the responses (letter from R. Schepens, DOE, to K. Stablein, NRC, September 30, 1998) to the request for additional information, as well as information resulting from the April 1, 1999, public meeting between NRC and DOE staff. The results of the NRC staff review are enclosed to provide input to your decision. DOE is responsible for determining whether the residual tank waste can be classified as incidental.

Your tank closure methodology proposes using the incidental waste criteria approved by the Commission in the February 16, 1993 SRM and stated in the March 2, 1993, letter from R. Bernero, NRC, to J. Lytle, DOE, that were established for the treatment and disposal of removed HLW. In reviewing your methodology, staff took a generic performance-based approach rather than strictly applying the criteria developed in 1993. Criterion One from the March 1993, letter specified that ''. . . wastes have been processed (or will be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical.'' DOE identified only water washing and oxalic acid washing as technically feasible with regards to removal of key radionuclides following bulk waste removal. Water washing and bulk waste removal have been shown to be capable of removing 98 percent of the initial tank activity. Depending on the initial sludge inventories, oxalic acid washing, or comparable cleaning, will be required on selected tanks, although it is not considered to be economically practical for all 51 tanks.

The sampling methods used to characterize the HLW tanks at SRS have been evaluated. Several different sampling techniques were used. In general, the sampling process for Tanks 17 and 20 was adequate. NRC staff has concluded that available removal technologies have been extensively examined to determine those that are both technically and economically practical, and that the residual waste left in the tanks is limited to waste that cannot be removed by application of those technologies currently considered technically and economically practical for HLW tank cleaning. As the HLW tank closure process evolves over the next several decades the technical and economic feasibility of other waste removal options should continue to be evaluated.

The staff recommends that a set waste sampling protocol should be developed and followed. The number of samples obtained will be a function of the tank contents, as well as the homogeneity of the sludge. All sample results should be compared to process estimates to ensure consistency and accuracy. Any significant inconsistencies resulting from tank sampling and process history should result in further sampling.

The staff review generally found that DOE's methodology for removal of key radionuclides to the maximum extent economically and technically practical achieves the objectives of Criterion One.

The staff review of Criterion Two, '' . . . wastes will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for class C low-level waste as set out in 10 CFR Part 61,'' made use of information you provided on initial tank inventories and expected removal efficiencies. Fourteen of the 51 HLW tanks are anticipated to meet Class C limits by utilizing concentration averaging with only bulk waste removal and water washing. The other 37 tanks would require chemical cleaning via oxalic acid washing to meet Class C limits, even with the application of concentration averaging. DOE, therefore, plans to rely on alternative considerations of the classification of waste, rather than planning to use oxalic acid cleaning to meet Class C concentration limits. In particular, DOE relies on its plans to solidify the waste in layers of grout, some 30 feet below the surface of the ground, and relies on the disposal site, which it considers to be stable. In addition, it appears that there is reasonable assurance that the performance objectives of 10 CFR Part 61, Subpart C can be met without meeting the Class C concentration limits for all tanks. These considerations are similar to those in 10 CFR 61.58 of the Commission's regulations, and are viewed by DOE as providing comparable protection to an inadvertent intruder. Staff believes that concentration averaging in accordance with the Branch Technical Position on Concentration Averaging, is generally acceptable in this context to meet Class C concentration limits, and recognizes that the alternative provisions for waste classification proposed by DOE are generally similar to those in 10 CFR 61.58. Staff recommends that DOE develop site-specific concentration limits for residual waste in the SRS HLW tanks in order to bound the associated analyses and to provide a specific benchmark for satisfactory cleaning of the tanks.

As for the portion of Criterion Two that addresses the solid physical form, the staff believes that the waste has been sufficiently immobilized to help prevent inadvertent intrusion. By utilizing three different types of grout, the waste is further protected. The initial reducing grout pour helps to reduce

the mobility of the radionuclides. The middle layer of grout provides a solid foundation to guard against subsidence, and, finally, the top layer of strong grout provides protection against physical penetration of the waste. Therefore, the physical form aspect of Criterion Two appears to be achieved by our methodology.

Assessing Criterion Three, '' . . . wastes are to be managed, pursuant to the Atomic Energy Act, so that safety requirements comparable to the performance objectives set out in 10 CFR Part 61 are satisfied'' involves the evaluation of the tank farm performance assessment (PA).

DOE has indicated that it intends to meet a 4 mrem/yr drinking water dose limit. From standard dose modeling methodology, the drinking water dose is expected to be the largest dose contributor pathway. It appears from the performance assessment that the drinking water dose will be less than the 4 mrem/yr drinking water dose limit, and by extrapolation, that the individual dose will be less than the 25 mrem/yr total effective dose equivalent (TEDE) requirement of 10 CFR 61.41. In meeting the performance objective of §61.41, reliance on institutional controls beyond 100 years will not be needed, although DOE has proposed institutional controls in perpetuity. Future PAs should focus on meeting the performance objectives of 10 CFR Part 61 Subpart C and should not rely on any active institutional controls beyond 100 years. The NRC staff has concluded that the DOE methodology will achieve safety objectives comparable to §61.41.

To show protection of an inadvertent intruder, the standard agriculture scenario consists of a farmer who lives at the tank farm, and drills a well near the tank farm and then uses the well water to irrigate his crops and feed his livestock as well as himself. DOE–SR has provided only calculated drinking water doses for this intruder scenario. DOE's intruder PA showed that the maximum drinking water dose the farmer would receive via the ground-water pathway was 130 mrem/year at a well distance of 1 meter from the tank farm, at approximately 700 years. According to DOE–SR, the drinking water dose pathway is expected to be the highest dose contributor and, therefore, provides reasonable assurance of protection of individuals from inadvertent intrusion using a 500 mrem/year limit. The DOE–SR analysis assumes all activity is contained within the reducing grout layer located at the bottom of each tank, and that this contaminant zone is not disturbed. This then implies that there is no activity in any vertical component of the tank structure and, therefore, a typical construction scenario (with a 10 foot deep basement) would not disturb any contaminated portion of the tank structure.

The staff recommends that future performance assessments for SR tank closures, including individual tank closure modules, and the H-Tank Farm Fate and Transport Modeling, include the full agriculture scenario (all pathways) as well as the discovery scenario, as described in the Draft Environmental Impact Statement for 10 CFR Part 61. Staff also notes that closure of ancillary piping and equipment must consider an inadvertent intruder. That is, performance assessment must consider disturbed surface piping and equipment, which, in addition to tank sources, must not exceed a TEDE of 500 mrem per year (all pathways) for the discovery and agricultural scenarios. Furthermore, all external components (e.g., piping) have not been demonstrated to provide the same protection to an inadvertent intruder as the residual waste in the HLW tank bottoms. Without the proper intruder scenarios (e.g., intruder-agriculture) the NRC does not recognize in-situ disposal of external components as achieving the objectives of Criterion Three.

The worker is protected by DOE regulations which are analogous to 10 CFR Part 20. The worker protection performance objectives of §61.43 is, therefore, considered to be adequately addressed. By filling the tanks with three layers of grout, the site stability performance objectives of §61.44 can also be satisfied.

The staff recommends that future tank closure modeling should include a more thorough PA for all predicted or known source terms (i.e., all HLW tanks) in the F–Area Tank Farm and including the following: early degradation of grout, degradation of ancillary equipment and piping, combined aquifer scenarios, conservative distribution coefficient analysis, conservative radionuclide dispersion analysis, submerged tanks, conservative analysis for the horizontal versus vertical flux radiouclide transport processes for the saturated zone, and a complete all-pathways dose assessment. See the enclosed Technical Evaluation Report for further details and additional recommendations. In addition, future tank closure modeling (including individual tank closure modules, as well as fate and transport modeling for H–Tank Farm) should not refer to, or be reliant on in any way, previous modules. This will avoid confusion and errors associated with outdated data and assumptions.

By generally achieving each of the performance objectives stated in 10 CFR Part 61, Subpart C, the staff has concluded that the tank closure methodology is consistent with the objectives of Criterion Three.

Based on the information provided the staff has concluded that the methodology for tank closure at SRS appears to reasonably analyze the relevant considerations for Criterion One and Criterion Three of the three incidental waste criteria. DOE would undertake cleanup to the maximum extent that is technically and economically practical, and would demonstrate it can meet performance objectives consistent with those required for disposal of low-level waste. These commitments, if satisfied, should serve to provide adequate protection of public health and safety. Further, DOE's methodology relies on alternative classification considerations similar to those contained in the Commission's regulations at 10 CFR 61.58. The NRC staff, from a safety perspective, therefore does not disagree with DOE–SR's proposed methodology, contingent upon DOE reaching current goals for bulk waste removal, as well as water and chemical washing, such that the performance objectives comparable to those stated in Subpart C 10 CFR 61 are met. In addition, NRC judgment as to the adequacy of the methodology is dependent on verification that the assumptions underlying the analysis are correct.

The analysis performed regarding the proposed tank closure methodology for the HLW tanks located at the DOE Savannah River Site was performed by NRC according to the terms and conditions of the established Memorandum of Understanding and the Interagency Agreement. The analysis and resulting NRC conclusions are specific only to the 51 tanks located at the DOE Savannah River F and H Area tank farms, and related piping and equipment. The NRC assessment is a site-specific evaluation, and is not a precedent for any future decisions on waste classification scenarios at other sites, particularly sites under NRC jurisdiction.

Sincerely,

WILLIAM F. KANE,
Director, Office of Nuclear Material Safety and Safeguards.

Mr. GRAHAM of South Carolina. With that, to be continued. Thank you. Happy holidays.

Mr. AKAKA. Mr. President, I rise today in support of the fiscal year 2005 Defense authorization bill. I want to first commend Chairman WARNER and Senator LEVIN, who have continued their tradition of strong and bipartisan leadership. I also want to thank my friend, colleague and subcommittee chairman Senator ENSIGN, for his cooperation and leadership throughout this process this year.

While I think the bill before us goes a long way to supporting the needs of our service men and women, I do want to highlight a few concerns.

First, I am pleased that the administration finally followed Congress' lead and sent a request for an additional $25 billion to begin to address the ongoing military operations in Iraq and Afghanistan for the first few months of fiscal year 2005. While I do not support the structure of the administration's request, in part because it does not do enough to ensure accountability for how these funds would be used, I do support its intent, and I think it is imperative that we include an authorization of additional funding in the final version of this bill.

Second, while I support every action to aid our brave men and women in the armed forces, who are making so many sacrifices as they fight for our freedoms, I am concerned and disappointed by some of the actions we have taken in the bill we are reporting to the Senate. My greatest concern lies, as it did last year, in the reductions we have made in the working capital funds of the military services and defense agencies. While I disagreed with the cuts in these accounts last year, the ones this year are even more harmful, as DOD is already tapping these accounts to the greatest possible extent to get through the remainder of this fiscal year. So they will already be well below normal cash balances as they enter fiscal year 2005, and the $1.6 billion in reductions we have recommended in this bill will increase the risk of readiness problems by decreasing DOD's ability to provide spare parts, maintenance, and other support for our forces that are critical to their continued success. By cutting into these accounts, I believe we are sending a message that we do not support our troops, a message that I know could not be further from the truth.

Our forces deserve armored vehicles to protect them in Iraq, but they also deserve the spare parts they need to keep those vehicles running. When our troops come home, they deserve to have those vehicles repaired, rather than wait for maintenance from a depot until parts arrive that could have been ordered earlier if the working capital funds had had sufficient cash. We owe them the courage to make tough decisions to ensure that those needs are met now, not when future funds not yet requested may or may not become available.

On the positive side, I am pleased about our continued support for military construction and family housing

needs that are so critical to quality of life for our service men and women. I also support many of the provisions we have included that will further improve the management of the department. I particularly appreciate the bipartisan effort that the staff has made to address a wide range of procurement issues, environmental issues, and longstanding DOD financial management problems.

While I support the overall actions taken in this bill, and commend all of my colleagues for the hard work that they have invested, as ranking member of the Readiness Subcommittee I have mixed feelings about our actions. We have increased funding for some key programs, but at the expense of others where the impact might be more easily obscured. Our experience with the Air Force over the last few years has shown that there is a direct correlation between increased spare parts and mission capable rates for aircraft; those spare parts are provided through the Air Force Working Capital Fund. The Navy expects to have only a few days of cash on hand at the end of this fiscal year, and may be forced to bill customers before they actually receive their orders. And the Army faces a situation where its orders for parts and other key items exceed its cash on hand by more than 700 percent. Wartime, when we see a great expansion of customer needs for readiness and large fluctuations in required support, is not the time to take on more readiness risk by decreasing cash balances in the working capital funds. It hurts readiness, and it hurts the men and women who serve in uniform.

By reducing funding for the readiness accounts and failing to provide any supplemental funding for 2005, this bill does not do enough to meet the most pressing needs of our men and women in uniform.

I will support this bill, and I urge my colleagues to do the same. I think it is a good bill that could have been better, and I will continue to work throughout the rest of the authorization process to improve it.

MORNING BUSINESS

Mr. WARNER. I ask unanimous consent that the Senate now go into a period for morning business, with each Senator permitted to speak no longer than 10 minutes.

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

The Senator from Michigan.

MEDICARE VIDEOS

Ms. STABENOW. Mr. President, as we are wrapping up the session this week, I think it is very important to note what we all read in the Washington Post today. Something very serious was clearly spelled out. That is that the General Accounting Office has concluded the U.S. Department of Health and Human Services illegally spent Federal money on what amounted to covert propaganda, by producing videos about the Medicare changes that were made to look like news reports. Portions of the videos which had been aired by 40 television stations around the country do not make it clear that the announcers were paid by Health and Human Services, or paid by taxpayers, and that they were not real reporters.

In fact, the administration has violated two Federal laws. This comes from the nonpartisan arm, the Congressional Investigative Services, the General Accounting Office.

They indicated two different laws that the administration broke in these ads on Medicare.

No. 1, the Omnibus appropriations bill of 2003: The prohibition on using appropriated funds for publicity or propaganda purposes.

No. 2, the Anti-Deficiency Act: Incurred obligations in excess of appropriations available for that purpose.

This is just one more example of the ongoing saga in what happened in relationship to the passage of the new Medicare law and all of the irregularities—the pronouncement that, in fact, the law was violated and the other ethics investigations going on.

Let me go through some of what else is happening. It is stunning, actually, when you look at the full picture. I would argue that this is absolutely in the wrong direction and against the interests of those who count on Medicare—our seniors and disabled, and the American taxpayers who have been funding what the GAO says are illegal ads.

In addition to that, 2 weeks ago, the Congressional Research Service concluded that the administration potentially violated the law in a related matter in which the Medicare Program's chief actuary has said he was threatened with firing a year ago if he shared with Congress cost estimates that the Medicare legislation would be one-third more expensive than what we were told—one-third more expensive than the $400 billion the President said it would cost.

Also, the House ethics panel meanwhile is investigating whether Republican leaders attempted to bribe or coerce a Republican House Member—in fact, someone in my own State—to vote for the bill before it passed by a few votes just before dawn after the longest record rollcall in the history of the House.

We have numerous other challenges and questions. It is important to note for the record that the latest investigation by the GAO was not prompted by our side of the aisle, nor requested. It was something they looked into on their own separate from other concerns which have been raised. We have raised issues that relate to the advertising we have seen on television.

Concerning materials, the GAO indicated that, while they were not specifically in violation, the HHS materials have notable omissions and other weaknesses. They say it is a question of prudence and appropriateness for HHS's decision to communicate by placing advertising in Roll Call, which we all know is something that we read and certainly our constituents and the seniors and the disabled of the country do not read.

This goes on and on, questions of violating the law and questions of an ethics violation.

Now we see, in fact, that the administration specifically has broken two different laws. One of the questions is, What do we do about that? I think the public deserves the answer to that. What is it that we do when the administration violates the law as it relates to spending public dollars and advertising as it relates to this Medicare bill?

A colleague of mine is suggesting—since we know it is a campaign year and we know this is put forward certainly to put the best light on this for the administration—the Senator from New Jersey, Mr. LAUTENBERG, has suggested that the President repay the funds from his Presidential campaign.

Given what we know is happening this year and the fact that certainly the administration wants to have the best face put on this Medicare package and certainly has everything to gain from using public dollars to advertise that, I think it would be appropriate to ask the President to repay that from his campaign funds. In fact, they are in violation of the law.

We have seen questionable action after questionable action. The head of the center of Medicare and Medicaid, after writing this bill and working closely with the industry that benefits from it—the pharmaceutical industry—leaves to take a job with folks involved in the industry that will make money off of this new law.

We have seen other individuals leaving and going into lucrative positions where they will themselves be making money off of this new law.

We know it has been analyzed and that the pharmaceutical industry will be making, during the next 8 years, about $139 billion in new profits. That is tough to do if you are lowering prices and tough to do if you are providing a real Medicare benefit to seniors which they can afford.

The reality is that is not what this bill does. This bill doesn't allow Medicare to be able to negotiate group discounts as we do through the VA.

It creates a situation where up to 40 million seniors and disabled are locked into the highest possible prices—not only in our country but in the world. We have a bill that locks in high prices.

The industry is making billions of dollars from it. People from the administration are going to work for the industry or related businesses that will be making money off of this process.

We now see a situation where, again, the taxpayer money that was put aside

to be able to explain the Medicare bill has actually been used in a way that is in violation of the law.

I say again that the GAO concluded that the Department of Health and Human Services illegally spent Federal money—taxpayers' money—on what amounted to covert propaganda by producing videos about the Medicare changes that were made.

Another piece of that which is extremely disconcerting to me is we now have discount cards for seniors for those who qualify for Medicare—depending on where you live—and there could be 60 or 70 different cards that you now can attempt to wade through to try to find a discount card that will help you when you really are struggling to pay for your medicine.

We are now finding since passing the Medicare bill that many of the name brand companies have dramatically increased the prices of their products in anticipation of the discount card. The base is higher. That is like the storeowner who marked up the product 25 percent and then put a sign out that says: ''15 percent sale.'' That is what is happening to many of our seniors.

To add insult to injury, those who purchase cards—most of them are purchased for about $30—lock themselves into one card for a year after wading through all of the different cards. They pick the one that covers the medicines they use. They purchase the card and they are locked into it for a year, but the business, the industry can change every 7 days the list of what is covered. Today, four medicines are not covered; next week maybe two aren't covered; and next week maybe none of them are covered.

Why would this be set up like this? It is confusing. They are not real discounts. The discounts are changed. It is certainly not set up for the people who depend on Medicare every day.

Once again, the implementation of the bill that passed is being done in a way that helps the industry that already makes billions and billions of dollars in producing the products, but it is not helping our seniors. We want industry to be successful.

Taxpayers help subsidize the billions of dollars of research given free to the industry. We provide tax credits, tax deductions, writeoffs and patents. All we ask at the end of the day is that people can afford their medicine, that people can afford oftentimes the lifesaving medicine they need for their cancer, diabetes, or other chronic disease.

This is serious. We debated and had a lot of hoopla about a new law in Medicare. We have seen nothing but broken promises, broken laws, broken ethics rules since the adoption of the law. I suggest it is time to start over. We can do better. It is time to scrap this benefit, start over, get it right, follow the law, follow the ethics rules, negotiate group prices, get a real benefit, bring prices down. That is what our seniors expected the first time. It is time we make a commitment to get it right.

I am very hopeful between now and the end of the session in the fall that we are going to turn around and get this right. Scrap the old bill and pass a new one that focuses on helping our seniors and bringing down prescription drug prices for everyone. And by the way, it is time to follow the law in the process.

The PRESIDING OFFICER. The Senator from Washington.

NUCLEAR WASTE

Ms. CANTWELL. Mr. President, I take a few minutes to clarify points from the debate we had prior to moving off the DOE bill and the specifics of the Graham amendment.

I know my colleague, the Senator from South Carolina, is probably somewhere still in the vicinity of the Senate. I, too, admire the Senator from South Carolina on a variety of issues, particularly on National Guard issues and some of the challenges we have had, both coming from States that have been hard hit economically and challenged with a large number of people participating in our efforts in Iraq and Afghanistan. This issue that he and I disagree on obviously is one of utmost importance and certainly one that needs a lot of attention by the Members of this body. We will get that time and attention when we return to DOE after the recess.

I bring up a couple of points made that are the crux of my concern about this legislation; that is, that section 3116 of the underlying bill, the Defense authorization bill, attempts to reclassify high-level nuclear waste into a low-level material and allow it to be disposed of in a different way.

I object to that and I object to the process by which that legislation was drafted. The Senate Armed Services Committee does not have jurisdiction over the ability to reclassify waste. That is a change to the Nuclear Waste Policy Act drafted in 1982. If the Department of Energy wants to have that debate, then the Department of Energy should come down here and have hearings before the appropriate committees and discuss that issue. But to have such a major policy change of 30 years' policy since 1982 and 50 years of science saying this is what high-level nuclear waste is and one day changing it in the DOD bill is beyond absurd. Obviously, that is why we have spent time this afternoon talking about it.

The chairman of the committee asked me in a question whether that committee has jurisdiction over the issue. I know that DOE many times has tried with various environmental issues to have them go through the Senate Armed Services Committee, environmental issues such as the Resource Conservation Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, the Endangered Species Act. All of those, even though they are DOE issues, do not go through the Senate Armed Services Committee. In fact, the committee even said they are not part of our issues. Those are environmental policies or policies for other committees and referred to those specific committees.

I read to my colleagues rule XXV earlier regarding what the jurisdiction of the Senate Armed Services Committee is. It is specific to the national interests that were necessary in creating nuclear fuel. That was an offshoot of the reactors used in the development of plutonium for our efforts in World War II and the cold war, but they do not have the legislative oversight of the cleanup policy. That is the prerogative of other committees, the Energy and Natural Resources Committee, the Environment and Public Works Committee.

To make my point, I took section 3116 of this bill, this section that reclassifies waste, and introduced it today as my own legislation and asked for a referral. If we took this section on reclassification now as a stand-alone bill, let's see where it was referred to. That bill, Senate bill 2457, by Senator CANTWELL, was referred to the Energy and Natural Resources Committee. That proves my point, that this policy change is not the jurisdiction of the Senate Armed Services Committee, and the Senate Armed Services Committee should not try, in a closed-door session, in secrecy without having a public hearing, without having a public debate, to change policy of this significant nature which is not the jurisdiction of their committee.

I ask unanimous consent to have printed in the RECORD a letter from the ranking member of the Senate Energy and Natural Resources Committee that was also sent to the Senate Armed Services Committee chairman and ranking member asking them not to pass this legislation out of committee, and that it was the jurisdiction of the Energy and Natural Resources Committee.

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

U.S. SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, May 5, 2004.

Hon. JOHN W. WARNER, Chairman,
Hon. CARL LEVIN, Ranking Democratic Member,
Committee on Armed Services,
U.S. Senate, Washington, DC

DEAR SENATOR WARNER AND SENATOR LEVIN: I am writing to urge you not to include language relating to the reclassification of high-level radioactive defense wastes proposed by Senator Graham of South Carolina in the defense authorization bill.

For thirty years, it has been the policy of this nation that the high-level radioactive defense wastes temporarily stored in tanks at Savannah River and elsewhere would, in time, be removed from those tanks and permanently disposed of in new facilities licensed by the Nuclear Regulatory Commission. Enactment of Senator Graham's amendment would abandon that policy and permit the Department of Energy, in its discretion, to reclassify an unknown part of the tank wastes as transuranic or low-level

waste and either leave it where it is or ship it to New Mexico for disposal in the Waste Isolation Pilot Plant as transuranic waste, or to some other state for shallow land burial as low-level waste.

In addition, Senator Graham's amendment would exempt the Department's handling of these wastes from licensing and regulation by the Nuclear Regulatory Commission. Its enactment would have profound consequences for the nation's high-level nuclear waste policy, which is under the jurisdiction of the Committee on Energy and Natural Resources. It would also interfere in litigation now pending before the United States Court of Appeals for the Ninth Circuit.

For all of these reasons, I urge you not to include Senator Graham's amendment in the defense authorization bill.

Sincerely,

JEFF BINGAMAN.

Ms. CANTWELL. Mr. President, I am trying to make the point that the ranking member of the committee, and now the parliamentarian, have agreed that this is not the jurisdiction of this committee.

I ask my colleagues to weigh that in the time we have away from here, to drop this policy as it relates to trying to reclassify waste without having the proper public hearing and public comment about the issues.

Yes, everyone has heard of DOE attempts to try to reclassify this waste. It is well known that they actually tried to do it by order themselves and were shot down in court. They were shot down in court because specifically they do not have the authority. They have to change the definition under the Nuclear Waste Policy Act. If they want to do that, debate it on the Hill, have this discussion, and move forward.

I make a point that cleanup around America—whether it is in South Carolina, in the Savannah River, or whether it is Washington State at the Hanford reservation, whether it is Idaho or any other facility in this country—should be continuing. There is nothing about any court case or any court battle that prohibits the Department of Energy from continuing with cleanup. I hope they understand that is the judgment and the clarification of the court that ruled.

If my colleague from South Carolina is hearing that nuclear waste cleanup may be going slow or may be put on hold in the future, that is the absolute wrong message from the Department of Energy. Congress has appropriated funds, has appropriated funds in the past, and they should be going about their cleanup job.

What we are not going to do as a body is whitewash a change of significant nature where we do not have science backing that says we ought to reclassify this waste. In fact, science has been very specific in saying this is not a simple proposition.

In 1990, the National Academy of Science said:

There is strong worldwide consensus that the best, and safest, long-term option for dealing with HLW is geologic isolation.

Again, not grouting waste in existing tanks but removing the waste and putting it in a geological isolation, as we have suggested, and others have suggested, at Yucca Mountain.

A 1992 report by the Pacific Northwest Laboratory said:

The grouts will remain at elevated temperatures for many years. The high temperatures expected during the first few decades after disposal will increase the driving force for water vapor transport away from the grouts; the loss of water may result in cracking . . .

A 1992 study on this issue regarding just pouring cement and sand on nuclear waste and somehow storing it and solidifying it in the ground said there would be a result of cracking.

What we know in Washington State is we already had the cracking of the tanks. We already had a plume of nuclear waste going toward the river. So we already know what this situation is all about.

In 2000, the National Academy of Sciences said:

[W]aste tank residue is likely to be highly radioactive and not taken up in the grout, so there is substantial uncertainty. . . .

Another 2000 study by the National Academy of Sciences says:

[Using grout,] the ability of the site to reliably meet long-term safety performance objectives remains uncertain.

I think there is much science that basically says we do not think grout can work. Obviously, we do not know what the Department of Energy is trying to do, because they want to leave an unspecified amount of waste in the ground and not be specific about that. So it is very difficult for us to see.

I would also like in my short time here, because I know each Member is limited in time this evening, to refute the letter that was submitted by the Nuclear Regulatory Commission. While we do not know what the Nuclear Regulatory Commission was asked to comment on, what they ended up commenting on was not the underlying language in the DOD authorizing bill. They did not comment on the fact that the Graham language would significantly change the Nuclear Waste Power Act and classify high-level waste as something else.

What they did comment on was the fact that you could take the entire tanks out of the ground and it would be very expensive, which I do not know if people can imagine, because the Hanford site is miles and miles of acres—I think earlier we said something close to one-third the size of the State of Rhode Island. That is how big the Hanford reservation is—580 miles of land. These tanks that have stored the spent fuel are enormous.

The Nuclear Regulatory Commission is saying: We do not know if it is feasible to take out the tanks entirely. Well, no one ever said we expected to take out the entire tanks. What we said was we think the tanks have to be cleaned and the site has to be cleaned. And that is the removal process we should continue to do.

So I think while we would be wise to get a letter from the Nuclear Regulatory Commission that was specific about the exact proposal that is in this bill and get their response, the issue is they are not in charge of short-term waste disposal. They are in charge of this geological isolation solution we in Congress and others have been looking for, and basically asking questions about, and saying, Where are you going to take the vitrified waste and put it? They are not the regulatory entity over those short-term issues.

I think the Nuclear Regulatory Commission has not fully addressed the question. I think perhaps we should send them a more direct question to which we can get a more specific answer.

We will hear a lot more about this issue when we return from the legislative recess. But I assure my colleagues, we are going to continue to talk about the fact that we in Congress cannot have this significant a change in a policy by simply sneaking language into a Senate Armed Services Committee bill that does not have jurisdiction over this issue and make a major policy change that is 30 years of law—30 years of established law—and 50 years of scientific evidence and override that in a short period of time without a full discussion and debate.

This underlying bill language needs to be stricken. We need to get about the nuclear waste cleanup that the science says we should do; that is, removing the high-level waste and not simply trying to do cleanup on the quick by calling it grout.

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

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

ROBERT A. (BOB) BEAN

Mr. DASCHLE. Mr. President, earlier today many of our Senate family attended the funeral of a former Senate employee, Robert Bean. Bob started here in the Senate when he was 15 years old as a Senate page under the sponsorship of Majority Leader Mike Mansfield. Following his page graduation Bob moved into the Democratic cloakroom where he continued his outstanding service to our members. He rose to the position of Assistant Secretary for the Majority and then was appointed by Senate Majority Leader George Mitchell to the position of Deputy Sergeant at Arms in 1990. He moved to the Treasury Department's legislative affairs office in 1995 and remained there until 1999 when he returned to the Hill to work on the House side as the minority staff director of the House Administration Committee. He retired from the Hill in 2002 and he had just recently begun work for the Jefferson Consulting Group.

Throughout these years of service Bob earned his undergraduate degree from George Washington University and his law degree from American University's Washington College of Law. But all of these accomplishments pale in comparison to his personal accomplishments. Bob was known as a friend by anyone who came into contact with him. Whether you were a member of Congress or a new staffer, lost on the Hill, Bob would find a way to help you, and he would make sure you knew that, if you ever needed help again, he'd be there to assist you. The church was filled today and that was a testament to the type of person Bob was to so many people. He died at the age of 43 leaving behind his mother, Margaret and his brothers John, Kenneth, and Brian. Bob also left behind a Capitol Hill community united in mourning the loss of one of its most cherished possessions—a true friend. I would like to extend my sympathies to his mother, his brothers and to all those who were lucky enough to know him.

Mr. President, I ask unanimous consent that the eulogy given earlier today by Congressman STENY HOYER be printed in the RECORD.

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

EULOGY FOR ROBERT A. (BOB) BEAN

Father Nash, Father Polland, Members of St. John's Parish, Friends:

I first want to express my deepest condolences to the Bean family, Bob's mother, Margaret; his brothers, John, Kenneth and Brian; his sister-in-law, Patti; niece, Rachel; and nephew, Christian.

Your loss, I know, is as immeasurable as it is unexpected; that this good, decent, kind man who graced and brightened your lives—and all of ours—was summoned by our Creator, at what seems to so many of us as the twilight of youth.

The passing of one who had so much to offer, who yearned to serve others, who continually took it upon himself to help others, and who was enjoying what seemed to be the prime of his life, cuts particularly deep.

But the truth be told, Robert A. Bean, son of Margaret and Louis, lived more in 43 years than most do in twice that time.

Bob's service to our nation started early, when at the age of 15, he began working as a Senate page under the former majority leader Mike Mansfield.

He later served on the staff of the democratic cloakroom in the Senate, which is where I first met him after being elected to Congress.

I couldn't help but be impressed with Bob, by his willingness to help on matters big and small, his strong bearing, and his ability to get things done.

Bob was not passing time.

His talent, his character, his personality led to his being selected for ever-increasing responsibility: serving first as the assistant secretary for the democratic majority in the Senate and then as deputy sergeant at arms, where he performed the duties of chief law enforcement officer, protocol officer and manager of support services in the Senate.

In that position, he supervised thousands of employees and displayed his considerable management skills.

And yes, along the way, he earned a bachelor's degree from George Washington University as well as a law degree from American University.

Bob was always improving himself and, in the process, improving the lot of others.

In 1995, Bob was asked by Secretary Robert Rubin to join him at the Treasury Department as the Deputy Assistant Secretary of the Treasury for Legislative Affairs, where his extraordinary knowledge of the Congress and his reputation on Capitol Hill for honesty and insight would help guide our Nation to unprecedented prosperity in the 1990s.

Given the wide breadth of Bob's experience on Capitol Hill and in the Executive Branch, I was ecstatic that I had the opportunity to hire him in 1999 to serve as the staff director of the Committee on House Administration.

Bob's service in that position was an immense advantage to me, the Committee, and the Congress, which he loved.

Bob was a fierce partisan. He believed deeply in the Democratic party and its principles, and he lived them.

But his political convictions never translated into unthinking antagonism toward foes.

And I saw that first-hand during the negotiations on bipartisan election reform, a legislative effort that was perhaps Bob's legacy as staff director on the House Administration Committee.

Bob played to win, but he played by the rules. And Congressman Bob Ney, the Republican chairman of the Committee and his staff, knew that; and they respected and trusted Bob for it, which in my judgment is one reason why we were able to work together, across the partisan divide, to address the problems in our election system.

This week, Chairman Ney said of Bob:

''There were many times when the process was in danger of breaking down. Bob Bean refused to let that happen, though. He was a stand-up guy, a tremendously hard worker and truly great American.''

As anyone who walked through the Capitol with Bob knows, he knew an unbelievable number of people. House members and Senators. Staffers. Capitol Police officers. Maintenance workers. And cafeteria workers.

All who knew him were his friend.

Walking through the Capitol with Bob was a constant reminder of his experience and popularity on Capitol Hill—with people from all walks of life. And he returned their affection with kindness, consideration and respect.

A friend of Bob's for nearly 30 years, Sharon Daniels, the long-time executive assistant for Congressman Richard Gephardt, said of Bob:

''Bob is the kind of friend you could call at two in the morning, and ask: Can I borrow twenty thousand dollars? And, by the way, can you bring it to me by 4 a.m. out on Route 50? And Bob would not only do it. He would ask if there was anything else he could do—and, of course, when he showed up at 4 a.m., he would be wearing a suit and tie.''

And, then, of course, there was Captain Bean, skipper of the ''Margaret B.'' Fisherman extraordinaire.

He loved the bay and he loved his boat. And all who sailed and fished with him remember that experience as one filled with the joy of life and adventure.

How appropriate that God chose to take Bob home from his beloved bay and boat.

Bob loved his family and all of us, as well. He was a blessing to each of us—a kind and gentle man, who succeeded in all of his careers: government leader, businessman, captain, consultant.

But his greatest success was as a human being. So as we pay our respects to a beloved son and brother, a trusted and good friend, a colleague, let me end by quoting from the poem ''Chesapeake Mornings'' by Chris Kleinfelter:

''I measure all of my daybreaks at home,
''Against the Chesapeake mornings I have known,
''Anchored in the stillness of emerging light,
''Waiting for dawn to open my shadowed eyes.
''A grove of tall masts is tracing circles
''In the sky as restless keels and unmanned rudders
''Stain the blue water with rippling patterns;
''Brush stokes from the steady hand of God.''

Bob has joined God now on one last voyage that beckons us all.

Yes, his heart has been stilled.

But ours have been enriched beyond measure-and forever—for having this opportunity to share time with this good and decent man.

HONORING OUR ARMED FORCES

PETTY OFFICER 2ND CLASS TRACE DOSSETT

Mr. GRASSLEY. Mr. President, I would like to pay tribute to Petty Officer 2nd Class Trace Dossett who valiantly gave his life for his country on Sunday, May 2, 2004. Petty Officer Dossett was one of five Navy Seabees from Naval Mobile Construction Battalion 14 killed during a mortar attack on the Ramadi Marine base in Iraq. I offer my deepest sympathy to his wife, Angela, their two daughters, Cassidie and Raimi, and his parents, Larry and Cheryl of Wapello, IA.

Petty Officer Dossett was a 1985 graduate of Wapello High School in Wapello, IA. He was respected in the community for his strong mind and sense of devotion to serve our country. Trace joined the Navy shortly after graduating from high school and ended his six year tour in the early 1990s. He joined the Naval Reserve a year ago and was activated in January. I am proud of the patriotism displayed by Petty Officer Trace Dossett and his exemplary commitment to defending America. I offer my condolences to his family and close with the words of his wife, ''Trace died a hero and he would have had it no other way.''

PFC BRANDON CHAUNCY STURDY

Mr. GRASSLEY. Mr. President, I rise today to pay tribute to PFC Brandon Chauncy Sturdy, the fourteenth Iowan to be killed in Iraq in brave service to our country. PFC Sturdy was a machine gunner in the 2nd Battalion of the 1st Marine Regiment in the 1st Marine Division. I offer my deepest sympathy to his parents, Shelly Rivera and David Sturdy and his fiancé, Tricia Johnson.

PFC Sturdy was killed by the explosion of a homemade bomb in Iraq on Thursday, May 13 in the Al Anbar Province near Fallujah. I thank him for his patriotic duty to his country and am proud to honor the courage he boldly displayed as a Marine. PFC Sturdy was a 2003 graduate of Urbandale High School in Urbandale, IA. A statement released by Brandon's family describes him as ''the best of the best'' who ''set the bar high for us to reach for''. He was a top notch Marine who had already been awarded the

National Defense Medal and a Purple Heart. Brandon Sturdy died a hero fighting to preserve freedom. He was a brave patriot whose presence will be missed. I am proud of the model of service he provided to Iowans and I again offer my condolences to his family.

MAJ. WILLIAM E. BURCHETT

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave man who served in the Indiana Air National Guard unit stationed in Terre Haute, IN. Major William E. Burchett, 35 years old, died during a training mission when the F–16 he was flying collided with another F–16 fighter jet, just west of Indiana on Monday, May 17, 2004.

Bill graduated from the United States Air Force Academy in 1991. A native of Michigan, Bill moved to Terre Haute in 2000 after leaving active duty and being reassigned to the 181st Fighter Wing. He was a seasoned fighter pilot with over 2,300 flight hours in various military aircraft, which he flew while bravely serving our Nation on numerous occasions, including missions in Kosovo, Bosnia, Yugoslavia and Saudi Arabia. His love of flying also spilled over into his civilian career. When Bill wasn't training in his Air Force flight suit, he was working in his FedEx pilot uniform flying around the packages and supplies that help keep our Nation's economy moving forward.

Bill was a man of great faith as well as a hardworking and brave airman. He leaves behind his wife, Deborah who is expecting their third child in a few weeks and his two sons, ages six and two years old. May Bill's children grow up knowing that their father gave his life to help defend our great Nation and ensure that children in other countries, like Kosovo and Iraq, will some day know the freedom they enjoy.

Today, I join Bill's family, his friends, and the entire Indiana community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely training and fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Bill, a memory that will burn brightly during these continuing days of grief.

When looking back on the life of his late parishioner, Bill's minister, Mark Grayless told the Terre Haute Tribune Star that he ''was a fantastic family man. He was a really neat guy and great with his kids.'' Bill was known for his wonderful sense of humor, his unfailing patience and the incredible love he shared with his wife and small children. According to his friends, Bill's passion for flying may not soon be forgotten for his oldest son was quoted as having proudly pronounced that he, too, wanted to be a pilot, just like his dad.

It is my sad duty to enter the name of William E. Burchett in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about the unfortunate pain that comes with the loss of our heroes, I hope that families such as Bill's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Bill.

MONUMENT IN TRIBUTE TO ''THE GREATEST GENERATION''

Mr. LEAHY. Mr. President, the dedication of the long overdue World War II Memorial is a moment in time that we will always remember.

I am so pleased that many Vermont veterans from the WWII will be on hand for this solemn, and triumphant, occasion.

No monument—even one so grandly placed as this gleaming tribute in stone is, between the Washington and Lincoln Monuments—can fully capture the full enormity of the service and sacrifice of the 16 million soldiers, sailors, airmen and others who served in uniform during those 5 years of war and struggle. Yet with its marble expanse, majestic pillars, and carefully chiseled engravings, this memorial will forever stand as a symbol of the Nation's appreciation for those who served and for those who made the ultimate sacrifice.

World War II was truly an epic struggle. It was a struggle that would determine the very direction of humanity, whether militarism and Nazism would supplant freedom and democracy. Every American soldier understood the purpose and the stakes of that war. They unwaveringly answered the call to duty, they won the war, they returned home, and then the greatest generation soldiered on further to also win the peace.

We in Vermont often pride ourselves on our healthy skepticism of centralized government. Yet we are early and arduous in rallying to the Nation's defense in disproportionate numbers to our relatively small population, from the Civil War onward. In World War II nearly 50,000 men from the State of Vermont fought the axis powers. More than 1,200 Vermonters lost their lives in the war. At home and overseas, Vermont women also made great contributions to the war effort, and 1,400 of them served with our armed forces.

Today a new generation of veterans is being minted. I have had the honor of meeting many of the young men and women who are serving in Afghanistan and Iraq. These soldiers, sailors, airmen, and Marines tell me time and time again that they look over their shoulders to take pride and courage in the examples set by our World War II veterans, as well as our veterans from more recent wars.

On behalf of all Vermonters, as an American citizen, and as a member of one of several grateful generations, I welcome our proud veterans to Washington on the occasion of the dedication of the World War II Memorial. We thank you for all that you have done, and our Nation will forever honor your sacrifices.

We cannot thank you enough, but we can, and we will, always remember.

MEMORIAL DAY 2004 AND WWII MEMORIAL DEDICATION

Mr. DOMENICI. Mr. President, on this Memorial Day, I encourage my fellow New Mexicans to take a few moments to remember those Americans who have given their lives in the name of freedom. The freedom we enjoy today remains only because of their courage and unselfish sacrifice.

American men and women, throughout our Nation's history, have fought and died because they believed in their country and believed in preserving its immeasurable blessings. Many gave their lives for her in a far away land, and failed to make it back to the country or family they loved.

With this upcoming remembrance, I am reminded of Oliver Wendell Holmes, Jr. Holmes gave us some of the best thoughts, and his speech and writings, as a whole, will always be among the best of their kind.

On May 30, 1884, Holmes delivered a Memorial Day address before John Sedgwick Post No. 4, Grand Army of the Republic. The address reflected on the Civil War and during his address he focused on a question posed to him by a young man, about why people still kept up Memorial Day. In his wonderful style he gave attention why Memorial Day is what it is.

He said, ''Not the answer that you and I should give to each other-not the expression of those feelings that, so long as you live, will make this day sacred to memories of love and grief and heroic youth—but an answer which should command the assent of those who do not share our memories, and in which we of the North and our brethren of the South could join in perfect accord. . . . but Memorial Day may and ought to have a meaning also for those who do not share our memories.''

One month ago on April 29, 2004, the National World War II Memorial opened for public view. The memorial is the first national memorial dedicated to all who served during the WWII. The formal dedication will take place this Memorial Day weekend as a service and tribute to members of the World War II generation, and to share their memories. The memorial honors all military veterans of the war, the citizens of the time that stayed on the home front, and the America's moral purpose that ultimately warranted our nation's involvement.

The memorial was authorized by Congress in 1993, and this year's Memorial Day celebration on the National

Mall will culminate a long effort to honor America's World War II generation. I take a quick moment to thank my friend former Majority Leader Bob Dole, a wounded and decorated WWII veteran who served in this body, for chairing the World War II Memorial Commission and for giving countless hours to this wonderful work.

It has been nearly 59 years since the end of World War II. However, I think it is safe to say that from 1939 to 1945, when every major power in the world was involved in a worldwide conflict—those times, like the Civil War, were some of our nation's toughest. We live in a remarkably different world today, but Memorial Day has kept many memories. At this moment in America's history, our men and women in uniform are engaged in conflict in both Iraq and Afghanistan. They serve with the same courage and commitment shown by Americans of generations past, and they deserve our thoughts and prayers.

From the Bataan Peninsula to beaches of Normandy, from the Ia Drang Valley to Inchon, from Iwo Jima and Okinawa to the North Apennine Mountains of Italy, from Afghanistan to Iraq, and many other conflicts too numerous to mention, American men and women have fought and died because of their love of country.

I am proud that we have kept up Memorial Day. This one, in particular, brings significant meaning and a special time to remember and reflect. I pay a special tribute today to those who have fallen during the two conflicts in Iraq and Afghanistan, including those from my home state of New Mexico: CPT Tamara Archuleta of Los Lunas; Marine CPL Aaron Austin of Lovington; SrA Jason Cunningham of Carlsbad; Army SP James Pirtle of La Mesa; and Marine PFC Christopher Ramos of Albuquerque.

As we enjoy this holiday weekend with our family and friends, let us take some time to recognize the valor with which so many of our soldiers, sailors, airmen, and marines have fought when called upon by their country. Finally, may our United States continue to be blessed and may America forever remain the land of the free and the home of the brave.

HONORING WORLD WAR II VETERANS

Mr. CRAIG. Mr. President, more than 60 years ago a generation of Americans answered the call to service, leaving their daily lives and joining the fight in a world war that would dramatically change the way this country, and the world, conducted itself. Raised during the Great Depression, this ''Greatest Generation'' would have such a profound impact on our history that is almost impossible to overstate. Their legacy is formidable and lasting.

Almost six decades later, we are finally paying full tribute to those men and women, and this generation, who served and sacrificed their lives in defense of this great Nation and who ultimately saved the world from tyranny and tyrants. No doubt, those men and women and their triumph over evil have served as a stark reminder and inspiration to the men and women in uniform who have followed in their permanent footsteps.

However, the presence of this generation was not limited to the islands of the Pacific or the beaches of Normandy; it was also displayed by those who remained in this country to mobilize the home front during and after the war. No one can question the hard work and dedication this generation embraced that ultimately pushed this nation to the position of global economic, military, political, and social leadership we still maintain today. Almost overnight, America moved from isolation to a country of engagement.

Having learned this lesson well, America remained engaged with the world after the war, struggling against the advance of communism, and ultimately winning that battle.

I am proud of the role the citizens of my state played in these struggles, and as such, I would like to take a moment to honor those Idahoans who served and to those who lost their lives as a result of World War II. Their strong commitment and dedication to their state and to our country has not and will not go unnoticed. I am reminded of a saying, ''For your tomorrow, we gave our today.'' This statement embodies what this generation gave; but words can't fully describe what the soldiers and survivors of WWII contributed to this nation, during and after the war. That contribution changed the course, not only of our Nation, but of the entire world. We continue to see the repercussions of it today, and to be honest, I believe the effect will continue to be felt long after all of us are gone. The official motto of Idaho is ''Esto Perpetua,'' meaning ''May it last forever.'' Well, the same could probably be said of the influence of this generation on America.

Still, despite playing such a profound role in American history, until this year, there was no monument or memorial in our Nation's capital that honored the sacrifices of all World War II veterans. We have monuments and memorials for Vietnam and the Korean War, as we should. Just across the river in Arlington, there is the Iwo Jima Memorial which honors the U.S. Marines who served in World War II. It is a beautiful and fitting commemoration of the leathernecks' service in that conflict but just that branch, not all the services.

This Memorial Day, we will dedicate, at long last, the National World War II Memorial on the National Mall. I believe it is fitting that the memorial should take its place alongside Lincoln, Jefferson and Washington, in the place our nation comes to remember and honor the greatest deeds in our great history. I thank our veterans for their service, for guaranteeing my freedom and those of all Americans, and I wish them a Happy Memorial Day.

Mr. PRYOR. Mr. President, this week marks the 50th anniversary of Brown v. Board of Education, the Supreme Court decision that ultimately ended legal segregation in schools and helped catalyze a better education for all of America's children.

This landmark decision was the first significant action by an institution of national government in the struggle for equality. However, it would be naive to believe that Brown erased the hatred and ignorance that black families faced when testing their rights to a better education. One of the most dramatic examples occurred on September 24, 1957 when President Eisenhower ordered federal troops to Little Rock, AR to allow nine black children, the Little Rock Nine, to attend the all-white Central High School.

Of her experience, Melba Pattillo Beals of the Little Rock Nine recalls: ''I had to become a warrior. I had to learn not how to dress the best but how to get from that door to the end of the hall without dying.'' Her act of courage, and those of the other eight students who integrated Little Rock Central, helped change history for all Americans in a tale that continues to have immediacy.

Another one of those students was Ernest Green, who best explains why the Little Rock Nine sacrificed their innocence for a chance at a better education. He said, ''We wanted to widen options for ourselves and later for our children.'' Mr. Green was the first black student to graduate from Central High School. He later served as Assistant Secretary of Housing and Urban Affairs under President Jimmy Carter and now serves as the vice president of Lehman Brothers.

Turning opportunity into achievement is what civil rights pioneer Daisy Bates had in mind when she helped the Little Rock Nine break down the barriers that stood between them and an equal education. Despite threats on her life and financial ruin, Daisy Bates made significant strides in the courtroom and increased public awareness through her newspaper.

Mr. President, as a former student of Central High, I can tell you the impact of the Little Rock Nine is still felt in the hearts of its student body and teachers past and present. In 2007, Central High will commemorate the 50th anniversary of its desegregation crises. The National Park Service plans to build the Little Rock Central High School Visitors Center in time for this watershed anniversary, and I will be urging my colleagues to support funding for this endeavor later this year.

What we know today is that children all over America have the right to learn—whether their ancestors came to America on slave ships or the Mayflower. What we know today is that we all benefit when we learn together and work together for a common purpose. What we know today is

there are more black doctors, lawyers, judges and elected officials than ever before. What we know today is that there is more equality and more opportunity for all children.

But what we don't know, what we still question is whether we have really achieved the inclusion, equality and diversity in our schools that the Court intended when it struck down the ''separate but equal'' doctrine and required the desegregation of schools across America. I do not believe we have met the promise of Brown yet.

I am concerned that many public schools in Arkansas and around the country remain segregated by race and class, still unequal in regard to performance and resources. Today, a fourth-grade Hispanic child is only one-third as likely to read at the same level as a fourth grade white child. Only fifty percent of African-Americans are finishing high school, and only 18 percent are graduating from college.

We must do better, and President Bush and the Congress can do better by keeping the promises made to parents and students when it passed the No Child Left Behind Act. We must live up to this promise, and provide every child access to a quality public education. Daisy Bates, the Little Rock Nine and countless civil rights leaders did not endure hardship and sacrifice for us to fail now.

Mr. President, on this landmark anniversary, let us stand together to celebrate how far we have come. But let us also acknowledge the problems that stand in the way to a better education for all children. And let us commit ourselves to preparing our children for today's expectations and tomorrow's challenges.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On June 1, 2000, Gary William Mick, 25, pleaded guilty to first-degree murder, attempted murder, and armed robbery after admitting that he murdered a gay man and tried to kill another because he believed gay men were ''evil.'' In the first attack, a New Jersey man was bludgeoned to death with a claw hammer. Mick met his second victim, a dentist, at a bar. There, he had dinner with him and went home with him. Mick later attacked the man with a knife, a struggle ensued, and the victim escaped. Mick told police that a childhood incident caused him to hate homosexuals.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

A COLOSSAL FAILURE OF WHITE HOUSE LEADERSHIP IN IRAQ

Mr. LEAHY. Mr. President, according to the Washington Post, a recent poll by the Coalition Provisional Authority in Iraq, which is, for all intents and purposes, an entity of the U.S. Government, showed that 80 percent of the Iraqis surveyed reported a lack of confidence in the CPA and 82 percent disapprove of the U.S. and allied militaries in Iraq.

I mention this for two reasons.

First, I remember when, less than 2 months ago, much was made by administration officials and several Senators of a February poll which suggested that Iraqis strongly supported the U.S. occupation. They held it up as proof that our strategy was working, even if they could not explain what the strategy was.

To quote one of my friends on the other side of the aisle, who spoke on April 8:

> [I] noticed the BBC/ABC poll results in Iraq, which are fascinating. I only wish Americans were as upbeat about America as Iraqis are about Iraq. If you watched U.S. TV every day, you would think there was nothing but bad things happening in Iraq . . . But, in fact, in the BBC/ABC poll, which was taken from February 9th to February 28th, in answer to the question, ''How are things going today, good or bad, in Iraq?'' Overall, 70 percent said good, 29 percent said bad. . . And in terms of the optimism factor, how they will be a year from now, 71 percent of Iraqis thought things would be better a year from now . . .

He concluded by saying that this encouraging news was thanks to the leadership of the President of the United States.

Whatever the accuracy of that February poll, the CPA's recent poll indicates that far more Iraqis today oppose what we are doing in Iraq. The CPA's poll also shows that more than half of Americans surveyed oppose the President's policy.

This latest poll also compels us to ask why so many of the people we sought to liberate, and did liberate from the brutality of Saddam, turned against us so quickly. And why so many Americans are questioning the President's decision to go to war.

There are many reasons, the genesis of which dates back to the President's fateful decision to shift gears from fighting al-Qaida, which had attacked us, to overthrowing Saddam Hussein, who had not attacked us and who apparently had no plan or ability to.

That decision, followed by a remarkable series of miscalculations and misguided policies, has enmeshed our troops in an ill-fated, costly war from which neither the President, nor anyone else in his Administration, appears to have the faintest idea of how to extricate ourselves.

Let's review the history.

After September 11, there was nearly universal support for retaliation against al-Qaida. There was widespread sympathy and support for the United States from around the world. But then the President, encouraged by a handful of Pentagon and White House officials, most notably the Vice President, who were fixated on Saddam Hussein, changed course. And what followed, I believe, has very possibly increased the risk of terrorism against Americans.

We remember when someone in the administration ''gave currency to a fraud,'' to quote George Will, by putting in the President's 2003 State of the Union speech that Iraq was trying to buy uranium in Africa.

This administration repeatedly, insistently and unrelentingly justified pre-emptive war by insisting that Saddam Hussein not only had weapons of mass destruction but was hell-bent on using them against us and our allies.

Administration officials, led by Vice President CHENEY, repeatedly tried to link Saddam Hussein to 9/11 in order to build public support for the war, though there never was any link—none.

Truth tellers in the administration—like General Shinseki and Lawrence Lindsay—were either ridiculed or hounded out of their jobs because they had the temerity to suggest realistic estimates for the number of soldiers and amount of money it would take to do the job right in Iraq.

Incredibly, there was no real plan, despite a year-long, $5 million study by the State Department, to deal with the widespread looting that greeted our soldiers once Saddam had fallen—doubling or tripling the cost of reconstruction, and leaving open the gates to stockpiles of weapons and ammunition that have been used with deadly results against our soldiers.

We remember President Bush flying onto the aircraft carrier and declaring ''Mission Accomplished'' when, in fact, the worst of it was ahead.

Two months later, the President taunted Iraqi resistance fighters to ''Bring It On!'' while our troops were still in harm's way and were fending off ambushes and roadside attacks every day and every night.

Some of our closest allies and friends, like Mexico and Canada, and even those countries Secretary Rumsfeld called ''Old Europe,'' were belittled and alienated because they disagreed with our strategy of pre-emptive war—countries whose diplomatic and intelligence and military support we so desperately need today.

That sorry chronology has brought us to where we are today. Each day that passes, more Iraqis seem to turn against us, threatening the mission and morale of our troops.

The latest episode in this misguided adventure is the Abu Ghraib prison scandal. It is tragic for many reasons, but none more so than the harm it has caused to the image of our Armed

Forces and to our Nation, particularly among Muslims, and the fact that it could so easily have been prevented.

The International Red Cross had warned U.S. officials about the mistreatment of Iraqi prisoners last year, and nothing was done about it for months.

We also know that similarly cruel and degrading treatment of prisoners occurred at Bagram Air Base in Afghanistan. The New York Times first reported it last March. It described prisoners who had been kept naked in freezing cold cells, forced to stand for days with their arms upraised and chained to the ceiling, subjected to other humiliating and abusive treatment, and in at least two instances prisoners died in what were ruled homicides. We have since learned that many more detainees have died in U.S. custody in both Afghanistan and Iraq.

Even before last June, when I first sought information about the abuses at Bagram, my attempts to seek information about the dehumanizing and, I believe, illegal treatment of prisoners at Guantanamo were ignored.

It is no secret that Guantanamo was chosen precisely because the Pentagon wanted it to be outside the jurisdiction of U.S. courts. They did not want to be subjected to the watchful eyes of attorneys who know the law. They did not want to be bothered with U.S. or international law. As it turns out, many of the prisoners at Guantanamo who had been drugged and shackled and hooded and denied access to lawyers, were released after it was determined, a year or two later, that they were innocent.

Now we hear that there are videos of the treatment of prisoners at Guantanamo, but, like Abu Ghraib, we only learned about it from the press. That is the only way we have learned about any of what is increasingly looking like a pattern of cruel and degrading treatment of terrorism suspects in U.S. military custody.

Top Pentagon officials continue to insist that there is no pattern; that we are dealing only with ''isolated incidents.'' We could debate when ''incidents'' become so pervasive that they are part of a ''pattern.'' One might think that similar types of abuses of prisoners in U.S. custody in Cuba, Afghanistan, and Iraq during approximately the same time period would suggest a pattern, but perhaps not to those who bear responsibility. The fact is, as the Washington Post so clearly stated on May 20, this was ''A Corrupted Culture.''

We have heard that U.S. military intelligence gave the orders. We have heard of attempts by military to block investigations by the International Red Cross. We have heard that FBI officers declined to be present during interrogations because of the harsh methods that were used. We have heard of complaints by former Iraqi and Afghan prisoners that were ignored. We have heard about investigations of alleged abuses that were cursory, at best. We have heard of instances when denials of misconduct by military officers were treated as proof that nothing bad happened, while those who alleged the abuse were never interviewed.

We have learned that self-serving and reassuring statements about respect for the law by officials here in Washington, including the President and the Pentagon's top lawyer, bore little resemblance to what was going on in the field.

The sadistic acts that have now been published on the front pages of every newspaper in the world as well as millions of television screens have endangered our soldiers and civilians abroad and threaten our national security and foreign policy interests abroad. The photographs will be used as recruiting posters for terrorists around the world. They depict an interrogation and detention system that is out of control. They have made a mockery of President Bush's statement a year ago that the United States will neither ''torture'' terrorist suspects, nor use ''cruel and unusual'' treatment to interrogate them, and they directly contradict the more detailed policy on interrogations outlined in a June 25, 2003, letter to me by Defense Department General Counsel William Haynes.

It is apparent that, when it comes to Iraq, this administration is disinterested, at best, in the views of anyone who is either a member of the minority, or who, Republican or Democrat, dares to utter words of caution or criticism. But there are some basic truths that cannot be ignored.

First, atrocities occur in all wars. Invariably, there are incidents—often many incidents—in which excessive force is used, civilians are brutalized, prisoners of war are tortured and summarily executed. There has never been a war without such heinous crimes.

Second, our Armed Forces are the finest in the world. The vast majority of our troops have conducted themselves professionally and courageously, in accordance with the laws of war. But even Americans have at times used excessive force and violated the rights of civilians or prisoners. There were instances of this long before Abu Ghraib prison.

And it is precisely because these atrocities are predictable in any war that the Geneva Conventions and the Torture Convention exist. The United States was instrumental in the drafting and adoption of these conventions, whose purpose is to prevent atrocities against civilians and the mistreatment of prisoners of war, including Americans.

We should also recognize that not only were the abuses at Abu Ghraib prison not isolated incidents; similar practices have recently been documented in many prisons in the United States. We have seen the same types of humiliating and sexually degrading treatment, the assaults by prison guards, the misuse of dogs against defenseless prisoners, and the same failure to hold accountable those in positions of responsibility.

The President reaffirmed, in the midst of the Abu Ghraib scandal, that the United States is a nation of laws, and that those responsible for the mistreatment of Iraqi prisoners will be punished. This, of course, must happen. But it does not obscure the glaring hypocrisy of this administration.

On the one hand, last March, referring to the capture of U.S. soldiers by Iraqi forces, President Bush said, ''We expect them to be treated humanely, just like we'll treat any prisoner of theirs that we capture humanely. If not, the people who mistreat the prisoners will be treated as war criminals.'' On the other hand, there is the White House Counsel, who called the Geneva Conventions ''quaint'' and ''obsolete,'' and there is the pattern of abuses themselves and the way the administration ignored inquiries and warnings for months.

The White House set the tone, and the consequences were disastrous. According to the International Red Cross, 70 to 90 percent of the Iraq prisoners arrested—who were unquestionably entitled to the protections of the Geneva Conventions—were later determined to have been detained by mistake. That is appalling, but not so appalling that the Administration did anything about it.

The Red Cross reported that soldiers carrying out arrests ''usually entered after dark, breaking down doors, waking up residents roughly, yelling orders. Sometimes they arrested all adult males present in a house, including the elderly, handicapped or sick people. Treatment often included pushing people around, insulting, taking aim with rifles, punching and kicking and striking with rifles.''

Is it any wonder that so many Iraqis want us to leave? This is not what we expect of the conduct of our military operations. The Geneva Conventions have the force of law, and as a nation whose Bill of Rights was the model for the Universal Declaration of Human Rights, that holds itself out as a force for human rights and human dignity around the world, we should set the example. Any person taken into U.S. custody should be treated, at a minimum, consistent with the Geneva Conventions and in accordance with the Torture Convention.

This fiasco is part and parcel of the increasing insecurity in Iraq and the dangers facing our troops from a hostile population that has resulted from such miserably poor planning that so many people warned of.

It has claimed the lives and limbs of hundreds of Americans and of thousands of Iraqis.

It has caused deep divisions between ourselves and the Iraqi people and Muslims around the world.

It has damaged our image as a nation that stands for respect for human rights.

It represents a colossal failure of leadership.

As I and so many others have said for months, we cannot succeed in Iraq by ourselves. Not when the rationale for going to war has been exposed for the pretext that it was. Not when we are widely perceived as occupiers. Not when photographs of uniformed Americans abusing naked Iraqi prisoners have become the symbol of that occupation.

We saw, with the horrifying murder of Nicolas Berg by al-Qaida, the incredible depravity and determination of the enemy we face. Only weeks ago there were images of dismembered American corpses hanging from a bridge.

We are united in our revulsion, and in our commitment to bring to justice those responsible for such despicable acts. The question is how to do it effectively.

Last October 13th, in a memo entitled ''Global War on Terrorism,'' Secretary Rumsfeld asked, ''Are we capturing, killing or dissuading more terrorists every day than the madrassas and radical clerics are recruiting, training and deploying against us?''

Since then, he and the President have called Iraq the main front in the war against terrorism. It certainly did not used to be. Last week, I asked Secretary Rumsfeld how he would answer the question he posed last October—whether we are winning the fight against terrorism. He said he didn't know.

That speaks volumes. We are spending more than $1 billion a week in Iraq, and the Secretary doesn't know if we are winning.

President Bush's Iraq policy has been discredited not only among the world's Muslims, but among most of our friends and allies. Not only have we lost the moral authority that is necessary to defeat terrorism, we have been unable to even secure the country we liberated. As I have said repeatedly, we need a radical change of course, and that decision can be made only by the President of the United States.

The President has reaffirmed his steadfast support for the Secretary of Defense, and at this point it appears that Secretary Rumsfeld has no plans to leave. But many are seriously questioning whether we can succeed in Iraq, or against terrorism for that matter, so long as he and General Myers, and Deputy Secretary Wolfowitz, who are so closely identified with this discredited policy, remain at the helm.

At the same time, the President needs to articulate credible, achievable goals in Iraq, beyond ''staying the course'' and the usual cliches about remaking the Middle East.

We and the rest of the world need to know what those goals are and how he plans to achieve them, to whom we are going to turn over sovereignty that can effectively govern, how the President plans to secure the support needed from other nations to effectively address the deteriorating security situation, how long he expects our troops to stay in Iraq, and how many more billions of dollars it may cost.

Unless the President can answer these questions, more and more Americans will question how much longer we can ask our troops to risk life and limb in Iraq and the taxpayers to continue to pay for a policy that is not working.

END THE BLOCK AND BLAME GAME

Mr. GRASSLEY. Mr. President, I rise today to make an appeal to our Democratic colleagues to end this obstruction of legislation vital to our Nation. I am appealing to my Democratic colleagues to abandon this harmful, politically motivated, election year strategy of gridlock, and if I may be so bold, to suggest a different election year political strategy that will not hurt Americans.

The Democrats' obstruction strategy is no secret in Washington, although it may not be so obvious to those outside the beltway.

We have all heard of the old ''blame game.'' Well now, Congressional Democrats have taken it to a new level and created a new game. I call it the ''Block and Blame Game.''

According to a lobbyist, a few weeks ago one of the Senate's Democratic leaders gave a briefing to campaign contributors. First, all were assured, naturally, that the Democrats would take over the Senate. Second, they were told that to help secure this Democratic victory, they were implementing a strategy to block all major legislation, except for some appropriations measurers.

So how does blocking legislation elect Democrats? The answer came within days as a Senate Democrat blasted away, charging that while Republicans control the White House, the Senate and the House of Representatives, the GOP is getting nothing done. The block and blame game.

Democrats must think that as long as no one outside Washington can figure out the nuances of the legislative procedures of obstruction, then as they say, ''the proof is in the pudding,'' nothing is getting done, the Republicans are in control, and therefore the Republicans are to blame.

Who is really hurt by this strategy? Republicans? Maybe, if they are unable to explain the complicated procedures that are being used by Democrats to block the business of the Senate.

Clearly, it is the American people who are harmed. And for what reason? Simply, the interests of Americans are being sacrificed upon the altar of the selfish, political power struggle.

Please understand that I refuse to insult my Democratic colleagues by suggesting that they should not vigorously compete for control of Congress and the White House.

But they can do it in a way that helps Americans, not hurt them.

I do strongly urge them to abandon the block and blame game strategy and instead to join Republicans in making this closely divided Government work.

Let's all acknowledge that there are precious few legislative days left in the 108th Congress, that we have a large number of bills very important to our country, and that we do not have the luxury of debating and voting on each and every amendment we desire.

Let's recognize that no legislation will be perfect in everyone's mind, but let's not block it simply because we don't get everything we want.

Instead, let's work hard together to get these important bills to the President's desk to be signed into law.

And that is the basis of a better campaign strategy for Democrats, and one that will not undermine the vital interests of Americans.

Simply, Democrats could share credit for all the legislation enacted this year, but then they are free to argue with voters that had they been in control of the Congress and the White House, they would have done much, much better.

Or, Democrats might try to persuade voters that if they are elected, provisions that Democrats view as ill-conceived, will be repealed or modified.

Republicans are happy to engage Democrats in the debate this fall over the issues, our goals and our vision for our nation's future. And Democrats should be just as enthusiastic.

In short, there is no need to obstruct legislation. It makes no sense, it is totally irrational, for Democrats to be blocking critically needed legislation, crucial for their own constituents, simply because they fear that Republicans might get credit for passing and enacting legislation.

The ongoing fight over the Energy bill is a perfect case study that underscores my point of how the vital interests of Americans are being sacrificed on the alter of political ambition.

Last year, lobbyist working hard for either the medicare prescription bill or the Energy bill, were telling me that the Senate Democratic caucus was struggling with the following question: ''Which, if either bill, should we allow to pass? We definitely cannot let the President have two victories.''

Let me repeat, Congressional Democrats concluded that they could not let the President have two victories. So as it happened, Medicare was passed first, but then Democrats mounted a successful filibuster against the Energy bill.

They wanted to deny the President a victory.

Where did they get that crazy notion? What genius political consultants and pollsters are advising them?

Enacting the Energy bill would be a victory for all Americans, not just the President! It would be a victory for people of all political stripes.

There are provisions in the Energy bill that would help increase oil production, which would reduce gasoline prices.

Do you thing Americans, who drive up to the pump today, having to spend well over two dollars a gallon for gasoline, give a hoot whether or not enacting the energy bill could be considered

a victory for the President? Do you think for one moment that even the most dyed-in-the-wool Democrats living outside of Washington, DC say to themselves, ''Well, we may be paying $2.50 for gasoline, but thank goodness Congressional Democrats denied the President a legislative victory''?

Why don't Democrats do to the Energy bill, what they did to the prescription drug bill? Let it be enacted into law, and then go out and tell everyone what a terrible bill it is. Tell voters that the Energy bill is just terrible, but that Republicans are in control, and if that's their idea of good energy policy, so be it. But if you elect us, we will do this and that differently, and you will be far better off.

That type of political strategy does not undermine Americans. That strategy sets the stage for vigorous campaigns that will we won or lost based upon who have the best ideas and vision.

Perhaps, therein lies the problem for Democrats. Perhaps the block and blame game is easier to play for those who are not confident that they have better ideas and winning arguments about their goals and vision.

We came within two votes of shutting off the Democrat-led filibuster against the Energy bill. There are provisions in that bill of vital interest to virtually every part of our country, let alone establishing critically needed energy policy for our Nation as a whole.

For the upper Midwest's farm country, it contains renewable fuel provisions that will expand farm markets for corn and soybeans which in turn will increase income for farmers and rural Americans while expanding job opportunities. It contains provisions that increase our sources of oil and gas which will reduce the production costs of farmers as well as save money for all consumers throughout our country.

Each and every one of us can point to things we did not like in the bill, but instead of passing it for the greater good, it has fallen prey to the Democrat's block and blame game.

Just 3 weeks ago, Democrats sacrificed the renewable fuels section of the Energy bill to the block and blame game.

It is inconceivable that the renewable fuels amendment offered by the Democratic leader on April 27 could have been designed any better to assure its failure. It was guaranteed to fail. If you understand Senate procedures, and the importance of passing a regionally attractive, comprehensive Energy bill, it is obvious to you that this amendment was designed to fail.

Let me offer the proof.

First, everyone knows that any energy bill that has any hope of passing this Congress must be a comprehensive package that addresses a wide variety of energy issues and that draws bipartisan support from all regions of the country.

This fact has long been recognized by ethanol and farm organizations who have been working hard for approval of the renewable fuels standard. Moreover, these groups recognize that the comprehensive energy bill has provisions beyond ethanol and biodiesel that are very important to their members.

So why did the Democratic leader fail to offer instead the comprehensive energy bill, which included the renewable fuels standard, as an amendment?

He has been around here long enough to know Senators from other parts of the country, who want to pass pro-energy provisions more important to their states than ethanol, are not likely to vote to strip ethanol out. After all, such an effort would unravel the energy coalition, and thus reduce the likelihood of passing their preferred energy provisions.

So the Democratic leader offered an amendment that he knew was less likely to pass.

The second bit of evidence that this effort was part of the block and blame game, is that no pro-ethanol Republican ally was contacted in advance to help develop a strategy to assure that we secure enough votes.

We have always counted on bipartisan cooperation to support ethanol legislation, and for the first time that I can remember, neither I nor any other pro-ethanol Republican was contacted.

Third, and even more telling, the Democrat leader failed to contact the ethanol and corn grower lobbyists in advance. That, I know, has never happened. If you really want to pass renewable fuels legislation, every one of us in this body knows you better have the National Corn Growers and the Renewable Fuels Association ready and able to help you line up the votes.

Why weren't they contacted? Perhaps it is because Democrats knew they would refuse to be part of an effort to splinter the broad energy coalition, sinking all hope of passing any energy legislation this year, including that for renewable fuels.

They would not willingly let themselves become victims of the Democratic block and blame game!

The fourth bit of evidence that this amendment was designed to fail involves Senate procedure. As soon as the amendment was offered, a signed cloture petition was immediately offered by the Democratic leader to his own amendment. This cloture petition, by the way, was signed exclusively by Democrats.

The most obvious reason to invoke cloture is to cut off a filibuster. But who in the world was going to filibuster this amendment? We were trying to pass a long-overdue solution to differences that has stalled the internet tax bill. Moreover, if the Democratic leader's renewable fuels amendment was so popular, why worry about a filibuster? Let's just vote up or down on the amendment.

Although cutting off debate is the obvious, normal purpose of filing a cloture petition, there is another purpose which is not so widely understood. If cloture is invoked, all amendments to that underlying provision must be germane. If a second degree amendment is not germane, then you have constructed a hurdle requiring 60 votes to overcome.

Could it be, therefore, since no one was filibustering this amendment, that an attempt to invoke cloture was aimed at blocking the more popular, comprehensive energy legislation as a second degree amendment?

Indeed, Senator DOMENICI, recognizing hopes for energy legislation was being jeopardized by this block and blame game, offered the comprehensive energy bill as a second degree.

What most constituents do not know, is that had the democratic leader succeeded in gaining the 60 votes needed to invoke cloture on his amendment, the Domenici amendment would have been ruled out of order as non germane because it was far more expansive than the underlying amendment. It would have taken another 60-vote majority to overcome this ruling. That may not be impossible, but we know that some Senators vote will vote differently on a procedural question than they might on the underlying amendment. So this was another hurdle, another attempt at blocking the more popular provision that, remember, included the renewable fuels standard and had a much higher likelihood of passing.

The fifth piece of evidence that the Democratic leader's amendment was designed to fail is that he offered it to S. 150, instead of the compromise substitute amendment developed and offered by Senator MCCAIN, the chairman of the Senate Commerce Committee.

Given the long stalemate over the internet tax bill, we all knew that Senator MCCAIN's substitute had broken the impasse and that if anything was going to pass, it was his compromise.

But his amendment, No. 3048 was an entire substitute to the language of S. 150. We all know, therefore, that any amendment to S. 150, including amendment No. 3050 offered later by the Democratic leader, would fall when the McCain substitute was approved.

So you should offer an amendment to the substitute that will prevail. If you did not think you knew which would prevail, then you could offer two amendments—one to the underlying bill, and one to the substitute amendment.

Here is a good way to explain this. Suppose our objective is to get supplies to the space station. Do you load your supplies on the booster rocket, or do you load it into the space shuttle? The booster rocket in this case was S. 150, and the McCain substitute was the space shuttle. And we all knew that.

The next bit of evidence that the Democratic leader's ethanol amendment was designed to fail, is the very fact that he picked a bill, again, the internet tax bill, that is controlled and managed by the Senate's most out-spoken, anti-ethanol Senator.

If everything else failed to fail, adding an amendment to a bill to be taken to conference by Chairman MCCAIN was the iron-clad guarantee it would be rejected. And in fact, that is exactly what Senator MCCAIN stated on the floor of the Senate. He stated emphatically, and quite predictably, that if the ethanol or energy amendment passed, he would drop it in conference.

So the Democrat leader's amendment was designed in so may ways to fail, and thus, to block his own amendment. And guess who gets the blame? Republicans.

Farmers lose. All energy consumers lose. But if the block and blame game works and Republicans lose, too, then it is all worth it, because Congressional Democrats win.

The block and blame game.

An interesting exchange occurred between Chairman MCCAIN and Senator DORGAN during the debate of this amendment. Senator MCCAIN said, ''I am sure there may be a headline in South Dakota that says: Senator DASCHLE fights for ethanol.''

Senator DORGAN responded, ''Senator DASCHLE has not offered an amendment for the purpose of a headline in South Dakota.''

Guess what. As soon as his amendment failed, Senator DASCHLE did issue a press release. And not only that, the press release attacked Republicans.

The release, according to the Congressional Quarterly, was headlined, and ''Washington Republicans abandon ethanol.''

The block and blame game: hurts the farmers, hurts Americans, but helps the Democrats.

I would like to share a statement issued by the National Corn Growers following the vote:

Yesterday, during consideration of legislation dealing with internet sales taxes, Senator DASCHLE offered an amendment to create a Renewable Fuels Standard (RFS). Senator DOMENICI offered S. 2095 as a second degree amendment to the Daschle amendment. S. 2095 contains the RFS as well as other energy provisions. NCGA will support all efforts to pass an energy bill that contains an RFS and addresses the serious problem our nation faces regarding energy. We again call upon Congress to set aside partisan bickering and to pass an energy bill.

I agree wholeheartedly with the National Corn Growers Association. We have serious problems facing our nation, and we have several very important bills aimed at addressing these problems that are falling victim to the block and blame game.

I wish that what I was told by a Democratic lobbyist, about the strategy to block everything this year . . . I wish that it were not true. I hope that the Democratic leaders will have a change of heart and a change of campaign strategy that allows vital pieces of legislation to be signed by the President this year, and then let the election be fought over who has the best ideas or who will do better if they take control of Congress or the White House.

SECTION 8 HOUSING ASSISTANCE

Mr. DODD. Mr. President, I am pleased to join Senators SCHUMER, KENNEDY, REED, and others as an original co-sponsor of this important legislation, which would clarify the intent of a provision in the fiscal year 2004 appropriations law regarding the Section 8 housing voucher program.

The Department of Housing and Urban Development, HUD, has claimed that language in the FY2004 appropriations law requires it to distribute voucher funding in a manner that leaves no alternative but to reduce assistance by $191 million nationwide. Subsequently, it issued a notice on April 22, 2004 that put in place a new system for funding Section 8 vouchers that differed greatly from its usual practice. In the past, HUD would reimburse housing authorities for the cost of providing housing to low-income individuals based on their real, current costs. Under the April 22 guidelines, however, the reimbursements will be gauged to August 1, 2003, plus a small adjustment for inflation. In addition, the change will be retroactive to January 1, 2004, which will create even further confusion for those public housing authorities whose vouchers are already issued and whose budget are already finalized.

I strongly believe that that HUD's interpretation of the FY2004 appropriations law is both unduly restrictive and is in sharp contradiction to the intent of Congress to fully fund Section 8 program. Despite HUD's protestations that Congress forced its hand to make these cuts, Congress in fact added funding to the Section 8 program in FY2004 so that HUD could fully fund all vouchers currently in use. Congress appropriated $17.6 billion in FY2004 to renew expiring Section 8 contracts, or $1.4 billion above the amount requested by the administration. Although the FY2004 appropriations law did make some modest changes in how voucher funding is disbursed, nothing in the law mandated that HUD take the unprecedented step of cutting housing assistance for senior citizens, the disabled, and working families and individuals with the greatest housing needs.

It therefore makes little sense that HUD would insist on reading the FY2004 appropriations law in such a way as to produce more homelessness across the nation. My own State of Connecticut will be especially hurt if HUD's April 22 notice is not changed to reflect the program commitments of housing authorities. Many public housing authorities in Connecticut are anticipating that the HUD proposal will result in a significant reduction in funds needed to honor existing contracts as well as effectively administer the voucher program. The current average Housing Assistance Payment for many agencies has typically increased beyond the August 1, 2003 ''benchmark'' plus the Annual Adjustment Factor. In most cases, this result is not due to increases in local rental rates but reflects the rise in unemployment among Section 8 participants and thus an increase in the public housing authority's share of the rent.

The impact of the April 22, 2004 rule on Connecticut will be particularly severe given that that it has the sixth most expensive rental housing market in the nation and very few vacancies to meet the needs of low-income individuals. Coupled with the administration's proposed FY2005 budget cuts and block granting of the Section 8 program, which could adversely affect over 4,000 existing voucher holders in Connecticut, it is difficult to understand why HUD would be trying to balance its budget on the backs of low-income Americans.

The Department of Housing and Urban Development's April 22, 2004 notice is therefore just another salvo in the administration's war on the Section 8 program. Section 8 provides more than just rent assistance for low and moderate wage individuals in high cost housing markets. It also helps to sustain the employee base in urban markets, keeps wages for jobs in the service and manufacturing sectors competitive, enables corporations to remain and expand in their communities, and reduces the strain on vehicular transportation systems.

In an economy that is creating few jobs and producing scant affordable housing, HUD should be pursing policies to ensure that no family in America loses its housing assistance. HUD's April 22 notice should therefore be changed, so I urge my colleagues to support this urgent legislation.

MANUEL RODRIGUEZ GOMEZ, MD

Mr. COLEMAN. Mr. President, I rise today to honor Manuel Rodriguez Gomez, MD, Emeritus Professor of Pediatric Neurology at Mayo Medical School in Rochester, Minnesota, for his lifetime of education and as one of the first physicians in the United States to champion tuberous sclerosis complex, TSC. Dr. Gomez is considered by many to be the ''father'' of tuberous sclerosis complex research because of his many contributions to the field of TSC research and passionate patient care. Through his work to describe TSC over the lifespan of an individual with the disorder and the extraordinary resources provided by the Mayo Clinic, Dr. Gomez published extensively on his growing knowledge of the multiple organ involvement in TSC. He passionately encouraged his colleagues to not only provide medical care for individuals with TSC, but to also share their knowledge through conferences, publications and the three editions of the book, ''Tuberous Sclerosis Complex.'' This book is considered by his peers to be the premier medical textbook for care of TSC patients. For his dedication to the many individuals he treated throughout his medical practice and his guidance of the Tuberous Sclerosis Alliance, Dr. Gomez made the world a

better place for individuals living with TSC by providing exceptional medical care and guidance through the many challenges associated with living with the disease. His quest to better understand the nature and cause of the disease will benefit all patients diagnosed with this condition and possible unlock the secret to a cure that will eradicate this disease once and for all. Because of his dedication to his patients and his contribution to the research community, it is my pleasure to rise today, and offer this tribute to Dr. Gomez.

ADDITIONAL STATEMENTS

HONORING ERWIN ARNDT

• Mr. HARKIN. Mr. President, the National World War II Memorial will be dedicated here in Washington on the Saturday before Memorial Day. It is a stunningly beautiful monument, located midway between the Lincoln Memorial and Washington Monument. It is a long-overdue salute—an expression of profound gratitude—to the millions of Americans who served their country with courage, sacrifice, and selflessness in that war.

I would like to share with my Senate colleagues a remarkable story about how the small community of Walnut, IA, has expressed its gratitude to a local veteran of the Second World War, Erwin Arndt.

Mr. Arndt returned from the war to serve his community as an electrician, a volunteer firefighter, a city council member, and commander of the local AMVETS unit. Just about everybody in Walnut knows and respects Mr. Arndt. And there was much concern when he suffered a series of strokes over the past year.

All too typically, a man in Mr. Arndt's condition would have no choice but to become a dependent in a nursing home. But friends and neighbors in Walnut came to his rescue in a truly remarkable and inspiring way. They joined hands to give him the wherewithal and assistance he needed to continue living independently in his apartment.

A local restaurant helped to provide daily meals. Several citizens helped Mr. Arndt to keep his apartment clean and orderly, and take him to medical appointments. Still others organized shifts to keep him company in his apartment. Several especially kind citizens got together to purchase a motorized chair to help Mr. Arndt get around.

It was truly a community effort—an act of collective kindness that I find truly inspiring. As you can imagine, Mr. Arndt's daughter, Karen Dewinter, is overwhelmed with gratitude for what the people of Walnut did for her father. She told me that she was especially touched that on her father's birthday, the local AMVET auxiliary held a party at a cafe, where they brought cards from local elementary and preschool children.

I express my own gratitude to the people of Walnut, IA, for their extraordinary caring and kindness toward Erwin Arndt. Like millions of Americans of what Tom Brokaw has labeled ''the Greatest Generation,'' Mr. Arndt served our Nation with dedication in both war and peace.

In their own special way, the people of Walnut have said thank you to this veteran and beloved member of the community. I would like to add my own gratitude, not just to Mr. Arndt but also to the good citizens of Walnut.•

FRIENDS OF THE DES PLAINES PUBLIC LIBRARY

• Mr. DURBIN. Mr. President, I want to honor The Friends of the Des Plaines Public Library, an organization that has been serving the Des Plaines community for the past 50 years.

The Friends of the Des Plaines Public Library was founded in April 1954 by a planning committee of the northwest suburban branch of the American Association of University Women and members of several parent organizations from Des Plaines area schools.

The initial objectives of The Friends of the Des Plaines Public Library were to stimulate interest in the library and record historical data for the town of Des Plaines. Much of the historical data first recorded by The Friends has since become part of the collection of the Des Plaines Historical Society.

Over the course of the past 50 years, The Friends of the Des Plaines Public Library has come to play an invaluable role in the ongoing operations of the institution and community they serve. Members have volunteered to straighten book shelves, provided rainy day plastic bags to help protect books on loan, and held voter registration drives.

The Friends of the Des Plaines Public Library holds ongoing book sales to provide financial support to the library, enabling the library to purchase additional resources and provide educational programming for the citizens of Des Plaines. In the past, the proceeds of these book sales have enabled the library to purchase computers and audio visual equipment.

I congratulate the Friends of the Des Plaines Public Library as it celebrates its 50th anniversary. I am confident that this organization will continue its long tradition of promoting and fostering a lifelong commitment to reading and education in the community of Des Plaines long into the future.•

THE LIFE OF AN AWARD-WINNING COLUMNIST, REPORTER, AUTHOR

• Mr. BIDEN. Mr. President, I honor the life of an award-winning columnist, reporter and author. My friend, Bill Fiset, lived a long, distinguished life of 73 years, serving his country in World War II. In addition to his honorable career, he was a devoted husband, father, and grandfather.

Bill Fiset was born March 15, 1921 in Seattle, WA and attended Queen Anne High School and the University of Washington, where he was a member of the Delta Kappa Epsilon Fraternity and a member of the golf team. At 21, he was a reporter and wrote a column called ''Strolling Around the Town'' for the Seattle Times.

At 22, Fiset saw foreign service in Africa as an ambulance driver in the American Field Service, an organization giving medical aid to the Allies before the U.S. entered the war. He resigned the Field Service in Egypt in April 1942, and enlisted with the Royal Armored Service Corps. As a second lieutenant in the British 8th Army in North Africa, he served as a machine gunner on an armored lorry defending convoys from Italian bombers between Tobruk and Suez. Fiset also filed field reports as a war correspondent.

Then America entered WWII. With refugees flooding African transports, Fiset luckily used his recent gunnery experience to sign on with an American freighter as a member of the gun crew, reaching the U.S. 3 months later.

In October, 1942, he joined the Navy. He did his preflight training at St. Mary's College in Moraga, CA, and served as a blimp pilot in Airship Squadron 32 on a coastal submarine patrol stationed out of Moffet Field, California.

After the war, Fiset worked as a reporter for the Oakland Post Enquirer from 1946 to 1950 and joined the San Francisco Call Bulletin as a staff reporter from 1950 to 1952.

Fiset then wrote for the Oakland Tribune from March 1952 to 1955 as a general assignment reporter covering such infamous murder and kidnap trials as Burton Abbott, Carl Chessman; and Barbara Graham, Jack Santo and Emmett Perkins of the so-called Mountain Murder Mob. He also witnessed and reported on their executions at San Quentin Prison.

In 1956 he wrote the Tribune's first television column where he became internationally syndicated and was invited to do walk-on acting parts in ''Route 66'' and ''Tales of Wells Fargo.'' He began a general column for the Tribune in 1962. That same year, he was nominated for a Pulitzer Prize and won many awards for his writing. His award-winning public service booklets ''This Is Sherry'' and ''Want To Be Smart,'' written by Fiset and illustrated by artist Ray Marta were discreetly designed to warn children and parents about the dangers of kidnapping and child sex offenders. Over a million copies were distributed free worldwide and locally by the Tribune, the Bay Area Board of Education, and local police departments. The efforts earned a commendation by FBI Director J. Edgar Hoover as, ''a graphic message which may mean the difference between life and death for countless

youngsters,'' and was requested by police departments throughout the United States, Canada, and Europe.

From time to time Fiset continued to file news reports. He wrote about the airlift of Vietnamese-American children out of Vietnam by Ed Daly, a friend and the flamboyant owner of World Airways. In 1973, Fiset was one of the first to file an eyewitness report on the crash of the Soviet SST TU–144 crash at the Paris Air Show.

An avid golfer, Fiset participated in many civic groups and fund raisers. He taught news writing and reporting at the College of Alameda and for many years was a board member for JACKIE, an agency that finds foster homes for children.

He was married for almost 60 years and is survived by his wife, Marian Fiset of Walnut Creek, his sons Rick Fiset of Danville, Gary Fiset of Alamo, daughter Michele Fiset Rice of Bryn Mawr, PA, and his eight grandchildren. Bill Fiset died peacefully on Sunday, May 2, in Concord, CA.●

HONORING THE STUDENTS OF DOBSON HIGH SCHOOL

● Mr. KYL. Mr. President, earlier this month, more than 1,250 students from across the United States were in Washington, DC to compete in the national finals of the ''We the People: The Citizen and the Constitution'' program. I am proud to note that the class from Dobson High School from Mesa, AZ received a fourth place honorable mention in this year's competition.

I would like to take a moment to mention the names of those students who competed for Dobson High: Andrew Barrett, Andi Berlin, Amanda Campbell, Catherine Capozzi, Eric Chen, Katy Cronenberg, Tom Emmons, Eva Farnsworth, Jennifer Heller, Annie Ho, Jamie Kearney, Katie Kearney, Maureen Klaum, Nicole Klundt, Jessie Leatham, Angela Mallard, Tara McMurdy, Joanna Sung, Taylor Morris, Kim Nath, Janne Perona, Dean Thong-Kahm, and Shaochen Wu. I would also like to acknowledge their teacher, Abby Dupke, the district coordinator, Kathy Williams, and the State coordinator, Susan Nusso.

I congratulate these budding constitutional experts and wish them the best of luck in the future.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in the 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.)

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY PROTECTING THE DEVELOPMENT FUND FOR IRAQ AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST—PM 78

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the national emergency declared in Executive Order 13303 of May 22, 2003, as expanded in scope by Executive Order 13315 of August 28, 2003, protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, is to continue in effect beyond May 22, 2004, to the *Federal Register* for publication.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq constituted by the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency protecting the Development Fund for Iraq, and certain other property in which Iraq has an interest, and to maintain in force the sanctions to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *May 20, 2004.*

UNITED STATES ARCTIC RESEARCH PLAN—PM 79

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

Consistent with the provisions of the Arctic Research and Policy Act of 1984, as amended (15 U.S.C. 4108(a)), I transmit herewith the eighth biennial revision (2004–2008) to the United States Arctic Research Plan, as prepared for the Congress and the Administration by the Interagency Arctic Research Policy Committee.

GEORGE W. BUSH.
THE WHITE HOUSE, *May 20, 2004.*

2004 COMPREHENSIVE REPORT ON U.S. TRADE AND INVESTMENT POLICY FOR SUB-SAHARAN AFRICA AND IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT—PM 80

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

Consistent with title I of the Trade and Development Act of 2000, I am providing a report prepared by my Administration entitled ''2004 Comprehensive Report on U.S. Trade and Investment Policy for Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act.''

GEORGE W. BUSH.
THE WHITE HOUSE, *May 20, 2004.*

MESSAGES FROM THE HOUSE

At 10:38 a.m., a message from the House of Representatives, delivered by the House Enrolling Clerk, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the resolution (S. Con. Res. 95) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009.

The message also announced that pursuant to section 211 of the Older Americans Act Amendments of 2000 (42 U.S.C. 3001 note), the Minority Leader appoints the following individuals on the part of the House of Representatives to the Policy Committee of the White House Conference on Aging: Barbara Kennelly of Connecticut and Robert B. Blancato of Virginia.

ENROLLED BILLS SIGNED

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H. R. 923. An act to amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

H.R. 3104. An act to provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 4:51 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 424. Concurrent resolution honoring past and current members of the Armed Forces of the United States and encouraging Americans to wear red poppies on Memorial Day.

H. Con. Res. 432. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

The message also announced that the House disagree to the amendment of the Senate to the bill (H.R. 1047) to amend the harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House: From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. THOMAS, Mr. CRANE, Mr. SHAW, Mr. RANGEL, and Mr. LEVIN.

ENROLLED BILLS SIGNED

At 7:28 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 408. An act to provide for expansion of Sleeping Bear Dunes National Lakeshore.

H.R. 708. An act to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.

H.R. 856. An act to authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes.

H.R. 1598. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in projects within the San Diego Creek Watershed, California, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 2728. To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration; and to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes.

S. 2448. A bill to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 4279. To amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

S. 2451. A bill to amend the Agricultural Marketing Act of 1946 to restore the application date for country of origin labeling.

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–7632. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Indoxacarb; Time-Limited Pesticide Tolerance'' (FRL#7359–1) received on May 19, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7633. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Isoxadifen-ethyl; Pesticide Tolerance'' (FRL#7355–8) received on May 19, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7634. A communication from the Assistant Director for Executive and Political Personnel, Department of the Army, transmitting, pursuant to law, a nomination rejected, withdrawn, or returned, received on May 19, 2004; to the Committee on Armed Services.

EC–7635. A communication from the Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–7636. A communication from the Acting Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report relative to defense federally funded research and development centers; to the Committee on Armed Services.

EC–7637. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, a report on the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC–7638. A communication from the Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council, transmitting, pursuant to law, the Subcommittee's Annual Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–7639. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300 and 600) Airplanes and Model A310 Doc. No. 2004–NM–57'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7640. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–400, and 400D Airplanes Doc. No. 2004–NM–42'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7641. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD–90–30 Airplanes Doc. No. 2001–NM–226'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7642. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–300, 400, and 500 Airplanes Doc. No. 2002–NM–174'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7643. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 707 and 720 Series Airplanes Doc. No. 2002–NM–335'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7644. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–600, 700, 700C, 800, and 900 Series Airplanes Doc. No. 2002–NM–101'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7645. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–400ER Series Airplanes Doc. No. 2002–NM–287'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7646. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A321–111, 112, 131, Airplanes Doc. No. 2002–NM–17'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7647. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Construcciones Aeronauticas, S.A. (CASA),

Model C–235 Airplanes Doc. No. 2002–NM–160'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7648. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Construcciones Aeronauticas, S.A. (CASA), Model C212 Airplanes Doc. No. 2002–NM–262'' (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7649. A communication from the Attorney Advisor, Maritime Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Deferment of Service Obligations of Midshipmen Recipients of Scholarships or Fellowships'' (RIN2133–AB58) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC–7650. A communication from the Assistant Secretary for Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, a report relative to leasing systems for the Cook Inlet, Sale 191; to the Committee on Energy and Natural Resources.

EC–7651. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Specific Service and General Service Signing for 24-Hour Pharmacies'' (RIN2125–AF02) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7652. A communication from the Assistant Secretary of the Army for Civil Works, Department of the Defense, transmitting, a draft of proposed legislation relative to authority in support of the Recreation Modernization Initiative; to the Committee on Environment and Public Works.

EC–7653. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Missouri Update to Materials Incorporated by Reference'' (FRL#7658–5) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7654. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; The 2005 ROP Plan for the Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Severe Area Severe 1-Hour Ozone Nonattainment Area'' (FRL#7663–7) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7655. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Indiana'' (FRL#7658–9) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7656. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program'' (FRL#7661–1) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7657. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans; Illinois'' (FRL#7657–8) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7658. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit Required State Implementation Plan Revision for the Metropolitan Washington, DC Ozone Nonattainment Area; Maryland'' (FRL#7665–6) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7659. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California and Nevada State Implementation Plans, Ventura County Air Pollution Control District and Clark County Department of Air Quality Management'' (FRL#7660–6) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7660. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and Ventura County Air Pollution Control District'' (FRL#7665–2) received on May 19, 2004; to the Committee on Environment and Public Works.

EC–7661. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare and State Health Care Programs; Fraud and Abuse: OIG Civil Money Penalties Under the Medicare Prescription Drug Card Program'' (RIN0991–AB30) received on May 19, 2004; to the Committee on Finance.

EC–7662. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed amendment to a manufacturing license agreement for the export of defense articles or defense services in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–7663. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed manufacturing license agreement for the export of defense articles or defense services in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations .

EC–7664. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed manufacturing license agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Canada and the United Kingdom; to the Committee on Foreign Relations.

EC–7665. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed manufacturing license agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to South Korea, Turkey, Spain, Saudi Arabia, and Chile; to the Committee on Foreign Relations.

EC–7666. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a proposed manufacturing license agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–7667. A communication from the Deputy Secretary of State and the Deputy Secretary of Defense, transmitting, pursuant to law, a report relative to the Global Peace Operations Initiative; to the Committee on Foreign Relations.

EC–7668. A communication from the Executive Secretary, Harry S. Truman Scholarship Foundation, transmitting, pursuant to law, the Foundation's Annual Report for 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–7669. A communication from the Secretary of Labor, transmitting, pursuant to law, the Department of Labor's report on the Office of Workers' Compensation Programs' administration of the Energy Employees Occupational Illness Compensation Program Act of 2000; to the Committee on Health, Education, Labor, and Pensions.

EC–7670. A communication from the Chief, Child Exploitation and Obscenity Section, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Designation of Agencies to Receive and Investigate Reports Required Under the Protection of Children from Sexual Predators Act, as Amended'' (RIN1105–AA65) received on May 18, 2004; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 1071. A bill to authorize the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study on a water conservation project within the Arch Hurley Conservancy District in the State of New Mexico, and for other purposes (Rept. No. 108–267).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1097. A bill to authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program (Rept. No. 108–268).

S. 1582. A bill to amend the Valles Preservation Act to improve the preservation of the Valles Caldera, and for other purposes (Rept. No. 108–269).

S. 1687. A bill to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System (Rept. No. 108–270).

S. 1778. A bill to authorize a land conveyance between the United State and the City of Craig, Alaska, and for other purposes (Rept. No. 108–271).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 1791. A bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes (Rept. No. 108–272).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1955. A bill to make technical corrections to laws relating to Native Americans, and for other purposes (Rept. No. 108–273).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2279. A bill to amend title 46, United States Code, with respect to maritime transportation security, and for other purposes (Rept. No. 108–274).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. Res. 321. A resolution recognizing the loyal service and outstanding contributions of J. Robert Oppenheimer to the United States and calling on the Secretary of Energy to observe the 100th anniversary of Dr. Oppenheimer's birth with appropriate programs at the Department of Energy and the Los Alamos National Laboratory (Rept. No. 108–275).

H.R. 1521. A bill to provide for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the State of Pennsylvania, and for other purposes (Rept. No. 108–276).

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

H. Con. Res. 409. A concurrent resolution recognizing with humble gratitude the more than 16,000,000 veterans who served in the United States Armed Forces during World War II and the Americans who supported the war effort on the home front and celebrating the completion of the National World War II Memorial on the National Mall in the District of Columbia.

S. Res. 362. A resolution expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004, in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II.

By Mr. HATCH, from the Committee on the Judiciary, with amendments:

S. 1933. A bill to promote effective enforcement of copyrights, and for other purposes.

By Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 2453. An original bill to authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GRASSLEY for the Committee on Finance.

*John O. Colvin, of Virginia, to be a Judge of the United States Tax Court for a term of fifteen years.

*Juan Carlos Zarate, of California, to be an Assistant Secretary of the Treasury.

*Stuart Levey, of Maryland, to be Under Secretary of the Treasury for Enforcement.

By Mr. HATCH for the Committee on the Judiciary.

Jonathan W. Dudas, of Virginia, to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

By Mr. SPECTER for the Committee on Veterans' Affairs.

*Pamela M. Iovino, of the District of Columbia, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. CONRAD, Mr. WYDEN, and Mr. GRAHAM of Florida):

S. 2451. A bill to amend the Agricultural Marketing Act of 1946 to restore the application date for country of origin labeling; read the first time.

By Mr. FEINGOLD:

S. 2452. A bill to require labeling of raw agricultural forms of ginseng, including the country of harvest, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry .

By Mr. SHELBY:

S. 2453. An original bill to authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security, and for other purposes; from the Committee on Banking, Housing, and Urban Affairs; placed on the calendar.

By Mr. DeWINE (for himself and Mr. DURBIN):

S. 2454. A bill to amend the Peace Corps Act to establish an Ombudsman of the Peace Corps and a Office of Safety and Security of the Peace Corps, to establish an independent Inspector General of the Peace Corps, and for other purposes; to the Committee on Foreign Relations.

By Mrs. HUTCHISON:

S. 2455. A bill to amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants; to the Committee on Finance.

By Mr. BAUCUS:

S. 2456. A bill to provide emergency disaster assistance to agricultural producers, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL:

S. 2457. A bill entitled ''Nuclear Waste Cleanup Act''; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2458. A bill to provide for the conveyance of certain public lands in and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 2459. A bill to authorize the Secretary of Homeland Security to award research and equipment grants, to provide a tax credit for employers who hire temporary workers to replace employees receiving first responder training, to provide school-based mental health training, and for other purposes; to the Committee on Finance.

By Mr. DOMENICI:

S. 2460. A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DeWINE (for himself and Mr. KENNEDY):

S. 2461. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, and Mr. ALLEN):

S. 2462. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself, Mr. CHAMBLISS, Mr. CRAIG, Mr. CRAPO, Mr. GRAHAM of South Carolina, and Mr. INHOFE):

S. 2463. A bill to terminate the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 2464. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 2465. A bill to amend the Controlled Substances Act with respect to the seizure of shipments of controlled substances, and for other purposes; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. COLEMAN, Mr. CRAPO, Mr. DEWINE, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. MILLER, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. CHAMBLISS, and Mr. INHOFE):

S. 2466. A bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER (for himself, Mr. KENNEDY, Mr. REED , Mr. DODD, Mrs. CLINTON, Mr. KERRY, Mr. LAUTENBERG, Ms. CANTWELL, Mr. KOHL, Mr. CORZINE, Mrs. MURRAY, Mr. CARPER, Mr. BINGAMAN, Mr. JEFFORDS, Mrs. BOXER, Mr. DURBIN, Mr. DAYTON, Mr. LIEBERMAN, and Mr. JOHNSON):

S. 2467. A bill to clarify the calculation of per-unit costs payable under expiring annual contributions contracts for tenant-based rental assistance that are renewed in fiscal year 2004; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. STEVENS, Mr. VOINOVICH, Mr. SUNUNU, Mr. LIEBERMAN, Mr. AKAKA, and Mr. DURBIN):

S. 2468. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

By Mr. TALENT:

S. 2469. A bill to amend the National Historic Preservation Act to provide appropriation authorization and improve the operations of the Advisory Council on Historic Preservation; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself, Mr. HARKIN, Mr. DURBIN, Mr. TALENT, Mr. GRASSLEY, Mr. COLEMAN, Mr. FITZGERALD, and Mr. PRYOR):

S. 2470. A bill to enhance navigation capacity improvements and the ecosystem restoration plan for the Upper Mississippi River and Illinois Waterway System; to the Committee on Environment and Public Works.

By Mrs. CLINTON:

S. 2471. A bill to regulate the transmission of personally identifiable information to foreign affiliates and subcontractors; to the Committee on the Judiciary.

By Mr. NELSON of Florida:

S. 2472. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN:

S. Res. 366. A resolution supporting May 2004 as National Better Hearing and Speech Month and commending those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; considered and agreed to.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. Res. 367. A resolution honoring the life of Mildred McWilliams ''Millie'' Jeffrey (1910-2004) and her contributions to her community and to the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 557

At the request of Ms. COLLINS, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 846

At the request of Mr. GRAHAM of Florida, his name was added as a cosponsor of S. 846, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance, and for other purposes.

At the request of Mr. SMITH, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 846, supra.

S. 847

At the request of Mr. SMITH, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 1368

At the request of Mr. LEVIN, the names of the Senator from Maine (Ms. SNOWE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 1369

At the request of Mr. AKAKA, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1369, a bill to ensure that prescription drug benefits offered to medicare eligible enrollees in the Federal Employees Health Benefits Program are at least equal to the actuarial value of the prescription drug benefits offered to enrollees under the plan generally.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1420

At the request of Mr. CRAIG, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1420, a bill to establish terms and conditions for use of certain Federal land by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such land.

S. 1515

At the request of Mr. GREGG, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1515, a bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach these subjects, and to other students.

S. 1721

At the request of Mr. CAMPBELL, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1721, a bill to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

S. 1883

At the request of Mr. ENZI, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1883, a bill to amend the Public Health Service Act to provide greater access for residents of frontier areas to the healthcare services provided by community health centers.

S. 1890

At the request of Mr. ENZI, the names of the Senator from Missouri (Mr. TALENT) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 2176

At the request of Mr. BINGAMAN, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2176, a bill to require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

S. 2270

At the request of Mr. DEWINE, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2270, a bill to amend the Sherman Act to make oil-producing and exporting cartels illegal.

S. 2271

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2271, a bill to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.

S. 2283

At the request of Mr. GREGG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2283, a bill to extend Federal funding for operation of State high risk health insurance pools.

S. 2302

At the request of Mr. CONRAD, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2302, a bill to improve access to physicians in medically underserved areas.

S. 2305

At the request of Mr. HAGEL, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2305, a bill to authorize programs that support economic and political development in the Greater Middle East and Central Asia and support for three new multilateral institutions, and for other purposes.

S. 2351

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

S. 2363

At the request of Mr. HATCH, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from Idaho (Mr. CRAIG), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2389

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2389, a bill to require the withholding of United States contributions to the United Nations until the President certifies that the United Nations is cooperating in the investigation of the United Nations Oil-for-Food Program.

S. 2411

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2411, a bill to amend the Federal Fire Prevention and Control Act of 1974 to provide financial assistance for the improvement of the health and safety of firefighters, promote the use of life saving technologies, achieve greater equity for departments serving large jurisdictions, and for other purposes.

S. 2425

At the request of Mr. COCHRAN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 2425, a bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews.

S. 2449

At the request of Mr. BAUCUS, the names of the Senator from New Hampshire (Mr. SUNUNU) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2449, a bill to require congressional renewal of trade and travel restrictions with respect to Cuba.

S. CON. RES. 81

At the request of Mr. STEVENS, his name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

At the request of Mrs. FEINSTEIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. Con. Res. 81, supra.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. RES. 221

At the request of Mr. SARBANES, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 221, a resolution recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities.

S. RES. 357

At the request of Mr. CAMPBELL, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 357, a resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week''.

AMENDMENT NO. 3170

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of amendment No. 3170 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3171

At the request of Ms. LANDRIEU, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 3171 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3196

At the request of Mr. DURBIN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of amendment No. 3196 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3204

At the request of Mrs. CLINTON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 3204 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. CONRAD, Mr. WYDEN, and Mr. GRAHAM of Florida):

S. 2451. A bill to amend the agricultural Marketing Act of 1946 to restore the application date for country of origin labeling; read the first time.

Mr. DASCHLE. Mr. President, today the Washington Post reported that the United States Department of Agriculture secretly allowed American meatpackers to resume imports of ground and processed beef from Canada last September, just weeks after Secretary Veneman publicly reaffirmed the Department's ban on such importation as a result of mad cow disease being found in Canadian-born cattle.

The article states that a total of 33 million pounds of Canadian processed beef came into the United States and went straight to American consumers under a series of undisclosed permits USDA issued to the meatpackers.

This is how today's article describes Secretary Veneman's public position last August:

> She and her top deputies said ground beef imports would resume only after the agency completed a formal rulemaking process, with public debate.

There was no public debate. Instead, there were undisclosed permits allowing banned Canadian beef in the United States.

Not only am I extremely concerned that the Department of Agriculture deceived American consumers by allowing the import of Canadian beef that was previously banned, but I am also disappointed that the Bush administration is actually working to prevent American consumers from knowing where the food they buy comes from.

That is why I am introducing a bill today that will require USDA to implement country-of-origin labeling on schedule this September. That was the date agreed upon in the Farm Bill which the President signed into law in 2002.

Unfortunately, at the urging of the Bush administration and the large meatpackers—most likely the same people who urged USDA to issue permits to allow the importation of banned Canadian meat products—Republican leaders in Congress inserted language into last year's omnibus appropriations bill in the dead of night delaying implementation of country-of-origin labeling for 2 years until September 2006.

The bill I am introducing today is what the Senate has voted to do several times: Inform consumers about the origin of their food.

Over 80 percent of American consumers have said they want to know the country of origin of their food, and over 170 groups representing over 50 million Americans support mandatory food labeling.

We must not allow anyone who may represent special interests, anyone who now abrogates the spirit as well as the letter of the law to choose big business interests over the interests of the average American family. We must ensure consumer confidence, particularly now in light of recent developments. We would have not had the situation of 33 million pounds of banned beef entering the United States if it couldn't have been properly labeled.

This legislation is long overdue. It is time that it become the law of the land.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2451

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COUNTRY OF ORIGIN LABELING.

Section 285 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638d) is amended by striking ''2006'' and all that follows through ''2004'' and inserting ''2004''.

By Mr. FEINGOLD:

S. 2452. A bill to require labeling of raw agricultural of ginseng, including the country of harvest, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. FEINGOLD. Mr. President, I would like to discuss legislation I am introducing that would protect ginseng farmers and consumers by ensuring that ginseng sold at retail discloses where the root was harvested. The ''Ginseng Harvest Labeling Act of 2004'' is similar to a bill that I introduced in the last Congress, but it has been further strengthened based on suggestions I received from ginseng growers and the Ginseng Board of Wisconsin.

I would like to take the opportunity to discuss American ginseng and the problems facing Wisconsin's ginseng growers so that my colleagues recognize the need for this legislation. Chinese and Native American cultures have used ginseng for thousands of years for herbal and medicinal purposes. As a dietary supplement, American ginseng is widely touted for its ability to improve energy and vitality, particularly in fighting fatigue or stress.

In the U.S., ginseng is experiencing increasing popularity as a dietary supplement, and I am proud to say that my home State of Wisconsin is playing a central role in ginseng's resurgence. Wisconsin produces 97 percent of the ginseng grown in the United States, and 85 percent of the country's ginseng is grown in just one Wisconsin county, Marathon County. Ginseng is also grown in a number of other States such as Maine, Maryland, New York, North Carolina, Oregon, South Carolina, and West Virginia.

For Wisconsin, ginseng has been an economic boon. Wisconsin ginseng commands a premium price in world markets because it is of the highest quality and because it has a low pesticide and chemical content. In 2002, U.S. exports of ginseng totaled nearly $45 million, much of which was grown in Wisconsin. With a huge market for this high-quality ginseng overseas, and growing popularity for the ancient root here at home, Wisconsin's ginseng industry should have a prosperous future ahead.

Unfortunately, the outlook for ginseng farmers is marred by a serious problem—smuggled and mislabeled ginseng. Wisconsin ginseng is considered so superior to ginseng grown abroad that smugglers will go to great lengths to label ginseng grown in Canada or Asia as ''Wisconsin-grown.''

Here's how the switch takes place: Wisconsin ginseng is shipped to China to be sorted into various grades. While the sorting process is itself a legitimate part of distributing ginseng, smugglers often use it as a ruse to switch Wisconsin ginseng with Asian- or Canadian-grown ginseng considered inferior by consumers. The lower quality ginseng is then shipped back to the U.S. for sale to American consumers who think they are buying the Wisconsin-grown product.

For consumers concerned with purchasing ginseng grown in the U.S., there is no accurate way of testing ginseng to determine where it was grown, other than testing for pesticides that are banned in the United States. The Ginseng Board of Wisconsin has been testing some ginseng found on store shelves, and in many of the products, residues of chemicals such as DDT, lead, arsenic, and quintozine (PCNB) have been detected. Since the majority of ginseng sold in the U.S. originates from countries with less stringent pesticide standards, it is vitally important that consumers know which ginseng is really grown in the U.S.

To capitalize on their product's preeminence, the Ginseng Board of Wisconsin has developed a voluntary labeling program, stating that the ginseng is ''Grown in Wisconsin, U.S.A.'' However, Wisconsin ginseng is so valuable that counterfeit labels and ginseng smuggling have become widespread around the world. As a result, consumers have no way of knowing the most basic information about the ginseng they purchase—where it was grown, what quality or grade it is, or whether it contains dangerous pesticides.

My legislation, the Ginseng Harvest Labeling Act of 2004, proposes some common sense steps to address some of the challenges facing the ginseng industry. My legislation requires that ginseng, as a raw agricultural commodity, be sold at retail with a label clearly indicating the country that the ginseng was harvested in. 'Harvest' is important because some Canadian and Chinese growers have ginseng plants that originated in the U.S., but because these plants were cultivated in the foreign country, they may have been treated with chemicals not allowed for use in the U.S. This label would also allow buyers of ginseng to more easily prevent foreign companies from mixing foreign-produced ginseng with ginseng harvested in the U.S. The country of harvest labeling is a simple but effective way to enable consumers to make an informed decision.

We must give ginseng growers the support they deserve by implementing these commonsense reforms that also help consumers make informed choices about the ginseng that they consume. We must ensure that when ginseng consumers reach for a high-quality ginseng product—such as Wisconsin-grown ginseng—they are getting the real thing, not a knock-off.

I ask unanimous consent that the full text of my bill, the Ginseng Harvest Labeling Act of 2004, be printed in the RECORD.

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

S. 2452

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 ''Ginseng Harvest Labeling Act of 2004''.

SEC. 2. DISCLOSURE OF COUNTRY OF HARVEST.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

''Subtitle E—Ginseng

''SEC. 291. DISCLOSURE OF COUNTRY OF HARVEST.

''(a) DEFINITION OF GINSENG.—In this section, the term 'ginseng' means an herb or herbal ingredient that—

''(1) is derived from a plant classified within the genus Panax; and

''(2) is offered for sale as a raw agricultural commodity in any form intended to be used in or as a food or dietary supplement under the name of 'ginseng'.

''(b) DISCLOSURE.—

''(1) IN GENERAL.—A person that offers ginseng for sale as a raw agricultural commodity shall disclose to potential purchasers the country of harvest of the ginseng.

''(2) IMPORTATION.—A person that imports ginseng into the United States shall disclose the country of harvest of the ginseng at the point of entry of the United States, in accordance with section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

''(c) MANNER OF DISCLOSURE.—

''(1) IN GENERAL.—The disclosure required by subsection (b) shall be provided to potential purchasers by means of a label, stamp, mark, placard, or other clear and visible sign on the ginseng or on the package, display, holding unit, or bin containing the ginseng.

''(2) RETAILERS.—A retailer of ginseng shall—

''(A) retain disclosure provided under subsection (b); and

''(B) provide disclosure to a retail purchaser of the raw agricultural commodity.

''(3) REGULATIONS.—The Secretary of Agriculture shall by regulation prescribe with specificity the manner in which disclosure shall be made in transactions at wholesale or retail (including transactions by mail, telephone, or Internet or in retail stores).

''(d) FAILURE TO DISCLOSE.—The Secretary of Agriculture may impose on a person that fails to comply with subsection (b) a civil penalty of not more than—

''(1) $1,000 for the first day on which the failure to disclose occurs; and

''(2) $250 for each day on which the failure to disclose continues.''.

SEC. 3. EFFECTIVE DATE.

This Act and the amendment made by this Act take effect on the date that is 180 days after the date of enactment of this Act.

By Mr. DEWINE (for himself and Mr. DURBIN):

S. 2454. A bill to amend the Peace Corps Act to establish an Ombudsman of the Peace Corps and an Office of Safety and Security of the Peace Corps, to establish an independent Inspector General of the Peace Corps, and for other purposes; to the Committee on Foreign Relations.

Mr. DEWINE. Mr. President, I ask unanimous consent that the Peace Corps Volunteers Health, Safety, and Security Act of 2004 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD.

S. 2454

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 ''Peace Corps Volunteers Health, Safety, and Security Act of 2004''.

SEC. 2. OMBUDSMAN OF THE PEACE CORPS.

The Peace Corps Act (22 U.S.C. 2501 et seq.) is amended by inserting after section 4 the following new section:

''SEC. 4A. OMBUDSMAN OF THE PEACE CORPS.

''(a) ESTABLISHMENT.—There is established in the Peace Corps the Office of the Ombudsman of the Peace Corps (in this section referred to as the 'Office'). The Office shall be headed by the Ombudsman of the Peace Corps (in this section referred to as the 'Ombudsman'), who shall be appointed by and report directly to the Director of the Peace Corps.

''(b) VOLUNTEER COMPLAINTS AND OTHER MATTERS.—The Ombudsman shall receive and, as appropriate, inquire into complaints, questions, or concerns submitted by current or former volunteers regarding services or support provided by the Peace Corps to its volunteers, including matters pertaining to—

''(1) the safety and security of volunteers;

''(2) due process, including processes relating to separation from the Peace Corps;

''(3) benefits and assistance that may be due to current or former volunteers;

''(4) medical or other health-related assistance; and

''(5) access to files and records of current or former volunteers.

''(c) EMPLOYEE COMPLAINTS AND OTHER MATTERS.—The Ombudsman shall receive and, as appropriate, inquire into complaints, questions, or concerns submitted by current or former employees of the Peace Corps on any matters of grievance.

''(d) ADDITIONAL DUTIES.—The Ombudsman shall—

''(1) recommend responses to individual matters received under subsections (b) and (c);

''(2) make recommendations for legislative, administrative, or regulatory adjustments to address recurring problems or other difficulties of the Peace Corps;

''(3) identify systemic issues relating to the practices, policies, and administrative procedures of the Peace Corps that affect volunteers and employees; and

''(4) call attention to problems not yet adequately considered by the Peace Corps.

''(e) STANDARDS OF OPERATION.—The Ombudsman shall carry out the duties under this section in a manner that is—

''(1) independent, impartial in the conduct of inquiries, and confidential; and

''(2) consistent with the revised Standards for the Establishment and Operation of Ombudsman Offices (August 2003) as endorsed by the American Bar Association.

''(f) INVOLVEMENT IN MATTERS SUBJECT TO ONGOING ADJUDICATION, LITIGATION, OR INVESTIGATION.—The Ombudsman shall refrain from any involvement in the merits of individual matters that are the subject of ongoing adjudication or litigation, or investigations related to such adjudication or litigation.

''(g) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, and semiannually thereafter, the Ombudsman shall submit to the Director of the Peace Corps, the Chair of the Peace Corps National Advisory Council, and Congress a report containing a summary of—

''(A) the complaints, questions, and concerns considered by the Ombudsman;

''(B) the inquiries completed by the Ombudsman;

''(C) recommendations for action with respect to such complaints, questions, concerns, or inquiries; and

''(D) any other matters that the Ombudsman considers relevant.

''(2) CONFIDENTIALITY.—Each report submitted under paragraph (1) shall maintain confidentiality on any matter that the Ombudsman considers appropriate in accordance with subsection (e).

''(h) EMPLOYEE DEFINED.—In this section, the term 'employee' means an employee of the Peace Corps, an employee of the Office of Inspector General of the Peace Corps, an individual appointed or assigned under the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.) to carry out functions under this Act, or an individual subject to a personal services contract with the Peace Corps.''.

SEC. 3. OFFICE OF SAFETY AND SECURITY OF THE PEACE CORPS.

The Peace Corps Act (22 U.S.C. 2501 et seq.), as amended by section 2 of this Act, is further amended by inserting after section 4A the following new section:

''SEC. 4B. OFFICE OF SAFETY AND SECURITY OF THE PEACE CORPS.

''(a) ESTABLISHMENT.—There is established in the Peace Corps the Office of Safety and Security of the Peace Corps (in this section referred to as the 'Office'). The Office shall be headed by the Associate Director of the Peace Corps for Safety and Security, who shall be appointed by and report directly to the Director of the Peace Corps.

''(b) RESPONSIBILITIES.—The Office established under subsection (a) shall be responsible for all safety and security activities of the Peace Corps, including background checks of volunteers and staff, the safety and security of volunteers and staff (including training), the safety and security of facilities, the security of information technology, and other responsibilities as required by the Director.

''(c) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Associate Director of Safety and Security of the Peace Corps, as appointed pursuant to subsection (a) of this section, should assign a Peace Corps country security coordinator for each country where the Peace Corps has a program of volunteer service for the purposes of carrying out the field responsibilities of the Office; and

''(2) each country security coordinator—

''(A) should be a United States citizen;

''(B) should be under the supervision of the Peace Corps country director in such country;

''(C) should report directly to the Associate Director of the Peace Corps for Safety and Security on all matters of importance that the country security coordinator considers necessary;

''(D) should be responsible for coordinating security activities with the regional security officer of the Peace Corps responsible for the country to which such country security officer is assigned; and

''(E) should have access to information, including classified information, relating to possible threats against Peace Corps volunteers.''.

SEC. 4. INSPECTOR GENERAL OF THE PEACE CORPS.

(a) ESTABLISHMENT OF INDEPENDENT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in section 8G(a)(2), by striking '', the Peace Corps'';

(B) in section 9(a)(1), by adding at the end the following new subparagraph:

''(X) of the Peace Corps, the office of that agency referred to as the 'Office of Inspector General'; and''; and

(C) in section 11—

(i) in paragraph (1), by striking ''or the Office of Personnel Management'' and inserting ''the Office of Personnel Management, or the Peace Corps''; and

(ii) in paragraph (2), by inserting '', the Peace Corps'' after ''the Office of Personnel Management''.

(2) TECHNICAL AMENDMENT.—Section 9(a)(1)(U) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''and'' at the end.

(b) TEMPORARY APPOINTMENT.—The Director of the Peace Corps may appoint an individual to assume the powers and duties of the Inspector General of the Peace Corps under the Inspector General Act of 1978 (5 U.S.C. App.) on an interim basis until such time as a person is appointed by the President, by and with the advice and consent of the Senate, pursuant to the amendments made in this section.

(c) EXEMPTION FROM EMPLOYMENT TERM LIMITS UNDER THE PEACE CORPS ACT.—

(1) IN GENERAL.—Section 7 of the Peace Corps Act (22 U.S.C. 2506) is amended—

(A) by redesignating subsection (c) as subsection (b); and

(B) by adding at the end the following new subsection:

''(c) The provisions of this section that limit the duration of service, appointment, or assignment of individuals shall not apply to—

''(1) the Inspector General of the Peace Corps;

''(2) officers of the Office of the Inspector General of the Peace Corps;

''(3) any individual whose official duties primarily include the safety and security of Peace Corps volunteers or employees;

''(4) the head of the office responsible for medical services of the Peace Corps; or

''(5) any health care professional within the office responsible for medical services of the Peace Corps.''.

(2) CONFORMING AMENDMENT.—The first proviso of section 15(d)(4) of the Peace Corps Act (22 U.S.C. 2514(d)(4)) is amended by striking ''7(c)'' and inserting ''7(b)''.

(d) COMPENSATION.—Section 7 of the Peace Corps Act (22 U.S.C. 2506), as amended by subsection (c) of this section, is further amended by adding at the end the following new subsection:

''(d) The Inspector General of the Peace Corps shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

SEC. 5. OFFICE OF MEDICAL SERVICES OF THE PEACE CORPS.

(a) REPORT ON MEDICAL SCREENING AND PLACEMENT COORDINATION.—Not later than 120 days after the date of the enactment of this Act, the Director of the Peace Corps shall submit to the appropriate congressional committees a report that—

(1) describes the medical screening procedures and guidelines used by the office responsible for medical services of the Peace Corps to determine whether an applicant for Peace Corps service has worldwide clearance, limited clearance, a deferral period, or is not medically, including psychologically, qualified to serve in the Peace Corps as a volunteer;

(2) describes the procedures and guidelines used by the Peace Corps to ensure that applicants for Peace Corps service are matched with a host country where the applicant can, with reasonable accommodations, complete at least two years of volunteer service without interruption due to foreseeable medical conditions; and

(3) with respect to each of fiscal years 2000 through 2003 and the first six months of fiscal year 2004, states the number of—

(A) medical screenings of applicants conducted;

(B) applicants who have received worldwide clearance, limited clearance, deferral periods, and medical disqualifications to serve;

(C) appeals to the Medical Screening Review Board of the Peace Corps and the number of times that an initial screening decision was upheld;

(D) requests that have been made to the head of the office responsible for medical services of the Peace Corps for reconsideration of a decision of the Medical Screening Review Board and the number of times that such decisions were upheld by the head of such office;

(E) Peace Corps volunteers who became medically qualified to serve because of a decision of the Medical Screening Review Board and who were later evacuated or terminated their service early due to medical reasons;

(F) Peace Corps volunteers who became medically qualified to serve because of a decision of the head of the office responsible for medical services of the Peace Corps and who were later evacuated or terminated their service early due to medical reasons;

(G) Peace Corps volunteers who the agency has had to separate from service due to the discovery of undisclosed medical information; and

(H) Peace Corps volunteers who have terminated their service early due to medical, including psychological, reasons.

(b) FULL TIME DIRECTOR OF MEDICAL SERVICES.—Section 4(c) of the Peace Corps Act (22 U.S.C. 2503(c)) is amended by adding at the end the following new paragraph:

''(5) The Director of the Peace Corps shall ensure that the head of the office responsible for medical services of the Peace Corps does not occupy any other position in the Peace Corps.''.

SEC. 6. REPORTS ON THE "FIVE YEAR RULE" AND ON WORK ASSIGNMENTS OF VOLUNTEERS OF THE PEACE CORPS.

(a) REPORT BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the appropriate congressional committees a report on the effects on the ability of the Peace Corps to effectively manage Peace Corps operations of the limitations on the duration of employment, appointment, or assignment of officers and employees of the Peace Corps under section 7 of the Peace Corps Act (22 U.S.C. 2506).

(2) CONTENTS.—The report described in paragraph (1) shall include—

(A) a description of such limitations;

(B) a description of the history of such limitations and the purposes for which it was enacted and amended;

(C) an analysis of the impact of such limitations on the ability of the Peace Corps to recruit capable volunteers, establish productive and worthwhile assignments for volunteers, provide for the health, safety, and security of volunteers, and, as declared in section 2(a) of the Peace Corps Act (22 U.S.C. 2501(a)), ''promote a better understanding of the American people on the part of the peoples served and a better understanding of other peoples on the part of the American people'';

(D) an assessment of whether the application of such limitations have accomplished the objectives for which they were intended; and

(E) recommendations, if any, for legislation to amend provisions of the Peace Corps Act that relate to such limitations.

(b) REPORT ON WORK ASSIGNMENTS OF VOLUNTEERS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Peace Corps shall submit to the appropriate congressional committees a report on the extent to which the work assignments of Peace Corps volunteers fulfill the commitment of the Peace Corps to ensuring that—

(A) such assignments are well developed, with clear roles and expectations; and

(B) volunteers are well-suited for their assignments.

(2) CONTENTS.—The report described in paragraph (1) shall include—

(A) an assessment of the extent to which agreements between the Peace Corps and host countries delineate clear roles for volunteers in assisting host governments to advance their national development strategies;

(B) an assessment of the extent to which the Peace Corps—

(i) recruits volunteers who have skills that correlate with the expectations cited in the country agreements; and

(ii) assigns such volunteers to such posts;

(C) a description of the procedures in place for determining volunteer work assignments and minimum standards for such assignments;

(D) the results of a survey of volunteers on health, safety, and security issues and of satisfaction surveys, which are to be conducted after the date of the enactment of this Act; and

(E) an assessment of the plan of the Peace Corps to increase the number of volunteers who are assigned to projects in sub-Saharan Africa, Asia, and the Western Hemisphere, particularly among communities of African descent within countries in the Western Hemisphere, that help combat HIV/AIDS and other global infectious diseases.

SEC. 7. DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.

In this Act, the term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

By Mrs. HUTCHISON:

S. 2455. A bill to amend title II of the Social security Act to repeal the windfall elimination provision and protect the retirement of public servants; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2455

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 ''Public Servant Retirement Protection Act''.

SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION PROVISION.

Paragraph (7) of section 215(a) of the Social Security Act (42 U.S.C. 415(a)(7)) is repealed.

SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NONCOVERED EMPLOYMENT.

(a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR FORMULA BASED ON COVERED PORTION OF PERIODIC BENEFIT.—

(1) IN GENERAL.—Section 215(a) of the Social Security Act (as amended by section 2 of this Act) is amended further by inserting after paragraph (6) the following new paragraph:

''(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

''(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

''(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (E), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 233, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 210(m)) which is based in whole or in part upon his or her earnings for service which did not constitute 'employment' as defined in section 210 for purposes of this title (hereafter in this paragraph and in subsection (d)(3) referred to as 'noncovered service'), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) or subparagraph (D) (as applicable).

''(B) In the case of an individual who first performs service described in subparagraph (A) after the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for subparagraph (A) of this paragraph), the individual's primary insurance amount shall be the product derived by multiplying—

''(i) the individual's primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C)(i) of this paragraph, by

''(ii) a fraction—

''(I) the numerator of which is the individual's average indexed monthly earnings (determined without regard to subparagraph (C)(i)), and

''(II) the denominator of which is an amount equal to the individual's average indexed monthly earnings (as determined under subparagraph (C)(i)),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

''(C)(i) For purposes of determining an individual's primary insurance amount pursuant to subparagraph (B)(i), the individual's average indexed monthly earnings shall be determined by treating all service performed after 1950 on which the individual's monthly periodic payment referred to in subparagraph (A) is based (other than noncovered service as a member of a uniformed service (as defined in section 210(m))) as 'employment' as defined in section 210 for purposes of this title (together with all other service performed by such individual consisting of 'employment' as so defined).

''(ii) For purposes of determining average indexed monthly earnings as described in clause (i), the Commissioner of Social Security shall provide by regulation for a method for determining the amount of wages derived from service performed after 1950 on which the individual's periodic benefit is based and which is to be treated as 'employment' solely for purposes of clause (i). Such method shall provide for reliance on employment records which are provided to the Commissioner and which constitute a reasonable basis for treatment of service as 'employment' for

such purposes, together with such other information received by the Commissioner as the Commissioner may consider appropriate as a reasonable basis for treatment of service as 'employment' for such purposes.

''(D)(i) In the case of an individual who has performed service described in subparagraph (A) during or before the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. There shall then be computed (without regard to this paragraph) a third amount, which shall be equal to the individual's primary insurance amount determined under subparagraph (B) as if subparagraph (B) applied in the case of such individual. The individual's primary insurance amount shall be the largest of the three amounts computed under this subparagraph (before the application of subsection (i)).

''(ii) For purposes of clause (i), the percent specified in this clause is—

''(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

''(II) 70.0 percent with respect to individuals who so become eligible in 1987;

''(III) 60.0 percent with respect to individuals who so become eligible in 1988;

''(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

''(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

''(E)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

''(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) by the amount of such reduction.

''(iii) For purposes of this paragraph, the term 'periodic payment' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

''(F)(i) Subparagraph (D) shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (D)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

''If the number of such individual's years of coverage (as so defined) is:	**The applicable percent is:**
29	85 percent
28	80 percent
27	75 percent
26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent

''(ii) For purposes of clause (i), the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.

''(G) An individual's primary insurance amount determined under this paragraph shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this title.

''(H) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 233 or an individual who on January 1, 1984—

''(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

''(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.''.

(2) CONFORMING AMENDMENTS.——

(A) Section 215(d)(3) of such Act (42 U.S.C. 415(d)(3)) is amended—

(i) by striking ''subsection (a)(7)(C)'' each place it appears and inserting ''subsection (a)(7)(E)'';

(ii) by striking ''subparagraph (E)'' and inserting ''subparagraph (H)''; and

(iii) by striking ''subparagraph (D)'' and inserting ''subparagraph (F)(i)''.

(B) Section 215(f)(9)(A) of such Act (42 U.S.C. 415(f)(9)(A)) is amended by striking ''(a)(7)(C)'' and inserting ''(a)(7)(E)''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to monthly insurance benefits for months commencing with or after the 12th calendar month following the date of the enactment of this Act. Notwithstanding section 215(f) of the Social Security Act, the Commissioner of Social Security shall recompute primary insurance amounts to the extent necessary to carry out the amendments made by this Act.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2458. A bill to provide for the conveyance of certain public lands in and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today on behalf of myself and Senator ENSIGN to introduce the Nevada Mining Townsite Conveyance Act, which will address an important public land issue in rural Nevada. As you may know, the Federal Government controls over 87 percent of the State of Nevada. That's more than 61 million acres of land. This fact makes it necessary for our State and our communities to pursue Federal remedies for problems that in other States can be handled in a much more expeditious manner. With this in mind, Senator ENSIGN and I look forward to working with our colleagues to pass this common-sense legislation in a bipartisan and timely fashion.

Two rural counties in Nevada have asked for our help in settling longstanding trespass issues that hurt 2 historic mining communities. The towns of Ione and Gold Point have been continuously occupied for over 100 years. Many residents live on land that their families have ostensibly owned for many decades. These citizens have paid their property taxes and made improvements to their properties, rehabilitated historic structures and built new ones.

The documents by which many of these people claim possession of the properties date back many years. In fact, some of the deeds are historic documents themselves. Yet because many of these documents do not satisfy modern requirements for demonstrating land title, they have been deemed invalid. In other words, the Bureau of Land Management has determined that some of the residents of Ione and Gold Point are trespassing on Federal land. This unfortunate situation puts the BLM at odds with the local residents and county governments.

Nye County, Esmeralda County, and the BLM have worked together for almost 10 years to come up with a solution to this problem. All of these parties support the legislation that we offer today as a solution to these land ownerships conflicts, and as a means of promoting responsible resource management. All of the land included in our bill has been identified by the BLM for disposal.

Our legislation represents the first of a two-part solution. Under this bill, specified lands within the historic mining townsites of Ione and Gold Point would be conveyed to the respective counties. Under the provisions of a State law passed several years ago in Nevada, the counties will then re-convey the land to these people or entities who can demonstrate ownership or longstanding occupancy of specific land parcels.

The sum of our bill is that it conveys for no consideration approximately 760 acres in Ione and Gold Point to the counties of Nye and Esmeralda. As a condition of the conveyance, all historic and cultural resources contained in the townsites shall be preserved and protected under applicable Federal and State law. These conveyances will benefit the agencies that manage Nevada's

vast Federal lands as well as the proud citizens of our rural communities. We sincerely hope that our colleagues will support this legislation. It is a practical solution that deserves swift passage. We salute the Bureau of Land Management, the counties, and the local residents for their cooperation and hard work in crafting this excellent compromise.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

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 ''Nevada Mining Townsite Conveyance Act''.

SEC. 2. DISPOSAL OF PUBLIC LANDS IN MINING TOWNSITES, ESMERALDA AND NYE COUNTIES, NEVADA.

(a) FINDINGS.— Congress finds the following:

(1) The Federal Government owns real property in and around historic mining townsites in the counties of Esmeralda and Nye in the State of Nevada.

(2) While the real property is under the jurisdiction of the Secretary of the Interior, acting through the Bureau of Land Management, some of the real property land has been occupied for decades by persons who took possession by purchase or other documented and putatively legal transactions, but whose continued occupation of the real property constitutes a ''trespass'' upon the title held by the Federal Government.

(3) As a result of the confused and conflicting ownership claims, the real property is difficult to manage under multiple use policies and creates a continuing source of friction and unease between the Federal Government and local residents.

(4) All of the real property is appropriate for disposal for the purpose of promoting administrative efficiency and effectiveness, and the Bureau of Land Management has already identified certain parcels of the real property for disposal.

(5) Some of the real property contains historic and cultural values that must be protected.

(6) To promote responsible resource management of the real property, certain parcels should be conveyed to the county in which the property is situated in accordance with land use management plans of the Bureau of Land Management so that the county can, among other things, dispose of the property to persons residing on or otherwise occupying the property.

(b) MINING TOWNSITE DEFINED.—In this section, the term ''mining townsite'' means real property in the counties of Esmeralda and Nye, Nevada, that is owned by the Federal Government, but upon which improvements were constructed because of a mining operation on or near the property and based upon the belief that—

(1) the property had been or would be acquired from the Federal Government by the entity that operated the mine; or

(2) the person who made the improvement had a valid claim for acquiring the property from the Federal Government.

(c) CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), the Secretary of the Interior, acting through the Bureau of Land Management, shall convey, without consideration, all right, title, and interest of the United States in and to mining townsites (including improvements thereon) identified for conveyance on the maps entitled ''Original Mining Townsite Ione Land Disposal Map Nye County'' and ''Original Mining Townsite Gold Point Land Disposal Map Esmeralda County'' dated October 29, 2003.

(2) AVAILABILITY OF MAPS.—The maps referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Secretary of the Interior, including the office of the Bureau of Land Management located in the State of Nevada.

(d) RECIPIENTS.—

(1) ORIGINAL RECIPIENT.—Subject to paragraph (2), the conveyance of a mining townsite under subsection (c) shall be made to the county in which the mining townsite is situated.

(2) RECONVEYANCE TO OCCUPANTS.—In the case of a mining townsite conveyed under subsection (c) for which a valid interest is proven by one or more persons, under the provisions of Nevada Revised Statutes Chapter 244, the county that received the mining townsite under paragraph (1) shall reconvey the property to that person or persons by appropriate deed or other legal conveyance as provided in that State law. For purposes of proving a valid interest, the person making the claim must have occupied the mining townsite for at least 15 years immediately before the date of the enactment of this Act. The county is not required to recognize a claim under this paragraph submitted more than 10 years after the date of the enactment of this Act.

(e) PROTECTION OF HISTORIC AND CULTURAL RESOURCES.—As a condition on the conveyance or reconveyance of a mining townsite under subsection (c), all historic and cultural resources (including improvements) on the mining townsite shall be preserved and protected in accordance with applicable Federal and State law.

(f) VALID EXISTING RIGHTS.—The conveyance of a mining townsite under this section shall be subject to valid existing rights, including any easement or other right-of-way or lease in existence as of the date of the conveyance. All valid existing rights and interests of mining claimants shall be maintained, unless those rights or interests are deemed abandoned and void or null and void under—

(1) section 2320 of the Revised Statutes (30 U.S.C. 21 et seq);

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq); or

(3) subtitle B of title X of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28(f)–(k)), including regulations promulgated under section 3833.1 of title 43, Code of Federal Regulations or any successor regulation.

(g) SURVEY.—A mining townsite to be conveyed by the United States under this section shall be sufficiently surveyed to legally describe the land for patent conveyance.

(h) RELEASE.—On completion of the conveyance of a mining townsite under subsection (c), the United States shall be relieved from liability for, and shall be held harmless from, any and all claims arising from the presence of improvements and materials on the conveyed property.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior such amounts as may be necessary to carry out the conveyances required by this section, including funds to cover the costs of cadastral and mineral surveys, mineral potential reports, hazardous materials, biological, cultural and archaeological clearances, validity examinations and other expenses incidental to the conveyances.

By Mr. ROCKEFELLER:

S. 2459. A bill to authorize the Secretary of Homeland Security to award research and equipment grants, to provide a tax credit for employers who hire temporary workers to replace employees receiving first responder training, to provide school-based mental health training, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am proud today to introduce the Community Security Act of 2004. This bill is intended to help prepare our Nation to cope with future disasters, as well as help the daily work of our first responders, by adequately training and equipping them, and by increasing Federal investments in relevant research and development. While much of the bill applies generally to all first responders, this legislation gives special emphasis to the role of volunteer first responders.

As my colleagues surely know, volunteers make up a very significant portion of our Nation's fire service, as well as emergency medical personnel and, to a somewhat lesser degree, law enforcement. The role of volunteers is especially prominent in rural areas, such as in my State of West Virginia. Making certain that local governments can recruit and retain first responders, and that once serving, these dedicated men and women have the necessary tools, are essential factors in protecting our communities.

Inspiration for much of this bill came from the West Virginia Summit on Homeland Security, which I hosted in November of last year, and from the numerous roundtable discussions I have had with my State's first responders since the terrorist attacks on our country on September 11, 2001. During the Summit and in the discussions that preceded it, first responders, educators, health officials, and local elected officials from around West Virginia provided me with thoughtful analysis of what works in Federal assistance programs, what doesn't, and what has been completely lacking.

Although the President and Congress have made great strides in improving our homeland security, there are still gaping holes in our level of preparedness that must be filled. For the most part, the Federal Government is the only source of funding for this work; work that must be done. This legislation is based on what first responders have told me they need and is intended to address these needs.

What was reiterated in meeting after meeting was that the gaps were many, and that additional State funding was unlikely. As almost every State in the Union faces budget shortfalls, I expect my colleagues have heard much the same thing. First responders and local politicians need to recruit and train volunteers; they need the Federal Government to help them supply these men and women with basic lifesaving and interoperable communication equipment; and they need help in fostering cooperation among not only the

different professions within the first responder community, but between first responders and the education and social service communities.

Many areas of concern were discussed and it became clear to me that no one program could address all of them. Instead of introducing a number of small bills, I've put together a package of legislation that contains several arguably unrelated provisions that have one thing in common—each is designed to improve homeland security at the local level.

In West Virginia and across the Nation, the numbers of volunteer first responders have been dwindling due to a number of factors—National Guard and Reserve call-ups and changing American lifestyles that leave little time for the serious commitment necessary to be a first responder. It is believed that many more people would volunteer, or would continue in their service as volunteers, if there were a way to carve out more time for the training involved. In addition to basic training, West Virginia and other states require additional training for first responders who choose to serve in units specializing in Weapons of Mass Destruction (WMD) response, or mitigation of biohazards and chemical releases. In fact, Secretary Ridge has cited West Virginia's homeland security plan, including development of highly trained Regional Response Teams, as an example for other States to follow.

The problem is, earning the right to be part of one of these teams—made up of the best of the best in their respective disciplines—requires training that most volunteers, who are holding down full-time jobs in addition to their public service and family responsibilities, cannot find the time for, or in some cases, afford. For example, West Virginia's Regional Response Team members are required, within the first two years, to complete 200 hours of specialized training over and above what is already required in their roles as firefighters or EMTs. For many volunteer first responders, this time commitment is difficult to meet but, for those whose jurisdictions do not pay training costs, it is impossible to justify.

To remedy this situation, this bill creates two tax incentives: a business credit to encourage small businesses to allow their volunteer first responder employees to take time off for training, and a personal deduction for the first responders themselves, when training and related expenses are not reimbursed by their State or local government.

My conversations with West Virginia first responders and local officials have also taught me that even when a State is well prepared or, in the case of West Virginia, exceptionally prepared, gaps can still exist at the local level which put citizens at risk. Some local first responder units, especially those in rural areas, do not feel as prepared as they know they should be. For example, a recent report found that most fire departments across the country had only enough radios for one-half of the firefighters on a shift and breathing apparatuses for only one-third. Without these basics, these brave men and women are not adequately equipped to respond to a house fire and are at a serious disadvantage when responding to a critical incident.

Similarly, some firehouses and police stations lack basic telecommunications equipment. I have been concerned for some time that many of our police departments in rural areas were operating without the crime-fighting tools at their disposal that computers and high-speed Internet connections offer. So, while I was not necessarily surprised, I was a little troubled that the lack of modern telecommunications equipment—computer hardware, Internet service and e-mail, and multiple phone and fax lines—was hampering the ability of fire departments and EMS units to serve their communities. Given the wealth of information available and the greater amounts of first responder work conducted over the Internet, these basic office tools are essential to guarantee the safety and protection of our citizens. For instance, where this equipment is available, some first responder training is now being done over the Internet, saving departments time and money. Rural firehouses are probably the ones least likely to have an Internet-accessible computer and are also the least likely to be able to fund a longer trip to a fire school.

So, this legislation requires the Secretary of Homeland Security to assess the critical needs of a first responder unit, from personal safety equipment to office machines, and establishes a grant program to provide the basic equipment essential for carrying out the constantly expanding responsibilities of local first responders. The Secretary is to give emphasis to those departments most in need. These departments will often, but not always, be rural departments.

The other areas I cover in this bill are a bit of a departure from standard measures to increase funding and provide better equipment for first responders. They are, I believe, no less important to the goal of improving the safety and security of our towns and cities. Again, my conversations with people on the front lines—in this instance teachers and academic experts on homeland security and mental health—inspired these provisions.

Our communities have had to adjust to some new realities. Our schools find themselves thrust into a role in disaster preparedness and response that most educators never before considered. When I asked school personnel what was needed to improve the circumstance of schools in homeland security preparation, response, and mitigation efforts, I was surprised to hear their answer—mental health professionals in the schools and training for school staff in mental health issues. This bill works to address these community needs in two ways. First, in the unfortunate event that a school is the scene of a disaster, or is called upon to assist a community in response to a disaster elsewhere, this bill provides that community with a reimbursement mechanism for related expenses. Second, the bill creates a sustainable program to provide school-based mental health services to all students. I am convinced that having mental health professionals in schools to train students and faculty about disaster avoidance and preparation makes for safer, healthier schools and more stable communities.

Our institutions of higher learning are already contributing to homeland security. The Department of Homeland Security has a program of university-based research, and this legislation proposes to expand it with a new research grant program to supplement the surprising dearth of research that has been conducted on human factors in homeland security, including first responder group dynamics, citizens' response to disasters, and the human factors behind preparation efforts. We know that a primary goal of terrorists is to disrupt social systems, and this social disruption is often more devastating to a community then the attack itself. I have actively supported both basic and applied scientific research throughout my Senate career, and I believe science should guide policy. This research grant program will fund research on how terrorism and the threat of terrorism impacts the average citizen, how the inevitable societal disruption can be mitigated, and will help guide disaster planning and optimize the performance of first responder units and the systems designed to assist them.

Historically, some States have benefited more than others under traditional grant systems and in response to that situation, our leading science funding organizations have developed special programs to encourage the growth of research in under represented states. For example, the National Science Foundation designed the Experimental Program to Stimulate Competitive Research to support academic research and development across the nation and to counteract the trend that concentrated research expertise in a few states. This bill allows for a similar program to be developed within the Department of Homeland Security. Homeland security is regional and research and personnel expertise must be distributed around the country. Unfortunately, terrorist threats against the United States are not restricted to a single geographic area, terrorist group, or method of threat. Terrorism is possible in many parts of our country that have never had to prepare for, or respond to, such attacks. Addressing these threats requires regional and local expertise; thus the homeland security- related scientific and technological workforce and training must not be overly centralized.

Our country has worked extraordinarily hard to prepare for disaster. The Local Preparation Act is designed to assist these preparation efforts by guaranteeing adequate numbers of first responders, providing them with the training and protection they need, and improving the safety and security of our communities. Local preparation is the bedrock of our state-wide and national efforts. I firmly believe these goals will be achieved through the innovative programs contained in this bill. I want to thank Summit participants as well as the men and women who have taken time out of their busy schedules to help work through the best way to design these new programs. Also, I want to thank first responders, both volunteer and career. After all, they are the original inspiration for this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2459

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 Security Act''.

SEC. 2. TAX INCENTIVES TO FACILITATE TRAINING OR DISASTER RESPONSE BY INDIVIDUALS SERVING AS VOLUNTEER FIRST RESPONDERS.

(a) FINDINGS.—Congress makes the following findings:

(1) Seventy percent of our Nation's firefighters are volunteers, as are many emergency medical service and police personnel.

(2) States rely heavily on the services of these volunteer first responders.

(3) Many career first responders begin as volunteers.

(4) Volunteer first responders need the same preparation and training as career first responders. Advanced training is frequently required before volunteer first responders can be fully integrated in a State homeland security plan.

(5) The training and duties of volunteer first responders sometimes conflict with their regular employment for significant periods of time, such as in cases of out-of-State training and disaster response. In these cases employers may need to hire temporary replacement workers or incur other related costs while the volunteer responders are away from work. The burden of temporarily replacing these employees is particularly great for small and single-employer businesses.

(b) VOLUNTEER FIRST RESPONDER CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

''SEC. 45G. CREDIT TO EMPLOYERS OF VOLUNTEER FIRST RESPONDERS.

''(a) GENERAL RULE.—For purposes of section 38, the volunteer first responder employee credit is an amount equal to 50 percent of the sum of—

''(1) the employment credit with respect to all qualified volunteer first responder employees of the taxpayer,

''(2) in the case of a small business employer, the replacement credit with respect to all qualified volunteer first responder employees of the taxpayer, plus

''(3) the self-employment credit of a qualified volunteer first responder self-employed taxpayer.

''(b) EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The employment credit with respect to any qualified volunteer first responder employee of the taxpayer is an amount equal to the lesser of—

''(A) the actual compensation amount with respect to such employee for such taxable year, or

''(B) $30,000.

''(2) ACTUAL COMPENSATION AMOUNT.—

''(A) IN GENERAL.—The term 'actual compensation amount' means the amount of compensation paid or incurred by the taxpayer with respect to a qualified volunteer first responder employee on any day when such employee was absent from employment for the purpose of participating in a qualified activity.

''(B) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(3) LIMITATION.—No credit shall be allowed under this subsection with respect to any day that a qualified volunteer first responder employee who takes part in a qualified activity was not scheduled to work (for reason other than to participate in a qualified activity).

''(c) REPLACEMENT CREDIT.—For purposes of this section.—

''(1) IN GENERAL.—The replacement credit with respect to any qualified volunteer first responder employee of the taxpayer is an amount equal to the sum of—

''(A) the qualified compensation with respect to each qualified replacement employee of the taxpayer paid by the taxpayer during the taxable year, and

''(B) the qualified overtime wages paid by the taxpayer during the taxable year.

''(2) LIMITATION.—The amount of the credit allowed by reason of this subsection shall not exceed $12,000 for any taxable year.

''(3) QUALIFIED COMPENSATION.—The term 'qualified compensation' means—

''(A) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(B) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(C) group health plan costs (if any) with respect to the qualified replacement employee.

''(4) QUALIFIED REPLACEMENT EMPLOYEE.—The term 'qualified replacement employee' means an individual who is hired to replace a qualified volunteer first responder employee, but only with respect to the period during which such employee participates in a qualified activity, including time spent in travel status.

''(5) QUALIFIED OVERTIME WAGES.—For purposes of this section, the term 'qualified overtime wages' means overtime wages paid to an employee of the taxpayer (other than a qualified replacement employee) for duties normally performed by a qualified volunteer first responder employee, but only with respect to the period during which such qualified volunteer first responder employee participates in a qualified activity, including time spent in travel status.

''(6) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by reason of paragraph (1)(A) with respect to such employee.

''(d) SELF-EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The self-employment credit with respect to a qualified volunteer first responder self-employed taxpayer is an amount equal to the amount paid or incurred by such taxpayer with respect to a qualified self-employment replacement employee.

''(2) QUALIFIED VOLUNTEER FIRST RESPONDER SELF-EMPLOYED TAXPAYER.—The term 'qualified volunteer first responder self-employed taxpayer' means a taxpayer who—

''(A) has self-employment income (as defined in section 1402) for the taxable year, and

''(B) holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.

''(3) QUALIFIED SELF-EMPLOYMENT REPLACEMENT EMPLOYEE.—The term 'qualified self-employment replacement employee' means an individual who is hired to replace the qualified volunteer first responder self-employed taxpayer, but only with respect to the period during which such taxpayer participates in a qualified activity, including time spent in travel status.

''(e) DEFINITIONS AND OTHER RULES.—For purposes of this section—

''(1) QUALIFIED VOLUNTEER FIRST RESPONDER EMPLOYEE.—The term 'qualified volunteer first responder employee' means an individual who—

''(A) has been an employee of the taxpayer for the 91-day period immediately preceding the period during which the employee participates in a qualified activity, and

''(B) holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.

''(2) QUALIFIED ACTIVITY.—The term 'qualified activity' means—

''(A) training with respect to duties performed in connection with the volunteer position of the qualified volunteer first responder employee or qualified volunteer first responder self-employed taxpayer, and

''(B) the performance of duties in connection with the volunteer position of the qualified volunteer first responder employee or qualified volunteer first responder self-employed taxpayer, but only to the extent that such duties take not less than 1 day to perform.

''(3) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 200 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.''.

(2) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the volunteer first responder employee credit determined under section 45G.''.

(3) TRANSITION RULE.—Section 39(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF VOLUNTEER FIRST RESPONDER EMPLOYEE CREDIT BEFORE ENACTMENT.—No portion of the unused business

credit for any taxable year which is attributable to the volunteer first responder employee credit determined under section 45G may be carried back to a taxable year beginning before January 1, 2004.''.

(4) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended—

(A) by inserting ''or compensation'' after ''salaries'', and

(B) by inserting ''45G,'', after ''45A(a),''.

(5) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45G. Credit to employers of volunteer first responders.''.

(6) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

(c) DEDUCTION FOR CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.—

(1) DEDUCTION FOR TRAVEL EXPENSES.—

(A) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (q) as subsection (r) and inserting after subsection (p) the following new subsection:

''(q) TREATMENT OF EXPENSES OF VOLUNTEER FIRST RESPONDERS.—For purposes of subsection (a)(2), in the case of an individual who participates in a qualified activity (within the meaning of section 45G(e)(2)) as a volunteer first responder (within the meaning of section 224) at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such participation.''.

(B) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(F) CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with participation in qualified activities (as defined in section 45G(e)(2)) as a volunteer first responder for any period during which such individual is more than 100 miles away from home in connection with such qualified activities.''.

(2) DEDUCTION FOR TRAINING EXPENSES.—

(A) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deduction for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

''SEC. 224. CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.

''(a) IN GENERAL.—In the case of a volunteer first responder, there shall be allowed as a deduction an amount equal to the expenses paid or incurred by the volunteer first responder necessary for training with respect to duties performed in connection with the volunteer position of such volunteer first responder.

''(b) VOLUNTEER FIRST RESPONDER.—For purposes of this section, the term 'volunteer first responder' means an individual who holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.''.

(B) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a) of such Code (relating to adjusted gross income) is amended by adding at the end the following new section:

''(20) VOLUNTEER FIRST RESPONDER TRAINING EXPENSES.—The deduction allowed by section 224.''.

(C) CONFORMING AMENDMENT.—The table of section for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 224 and inserting the following:

''Sec. 224. Certain expenses of volunteer first responders.

''Sec. 225. Cross reference.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

SEC. 3. CRITICAL NEED GRANTS FOR FIRST RESPONDERS.

(a) FINDINGS.—Congress finds the following:

(1) According to a report by the Council on Foreign Relations Independent Task Force, first responders in the United States are underfunded and unprepared for future natural, technological, and human-caused disasters.

(2) Local firefighters, police officers, and emergency medical personnel are responsible for disaster prevention, mitigation, and response.

(3) It is essential that first responders have basic safety equipment that is in good working order and customized, if appropriate, to do their jobs as safely and effectively as possible.

(4) All first responder operation centers need basic communications equipment, including—

(A) multiple touch-tone phone lines;

(B) a fax machine with a dedicated phone line;

(C) a computer with a high-speed connection to the Internet; and

(D) personal communication devices for shift supervisors, their commanders, and all first responders in a work unit.

(b) PURPOSE.—The purpose of this section is to establish a competitive grant program within the Department of Homeland Security to provide first responders with the basic equipment needed to accomplish their homeland security goals.

(c) LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

''SEC. 510. LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) BASIC PERSONAL EQUIPMENT.—The term 'basic personal equipment' means equipment necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d), including—

''(A) personal breathing apparatus;

''(B) protective equipment; and

''(C) bulletproof vests.

''(2) COMMUNICATIONS ENHANCEMENT.—The term 'communications enhancement' means improvements to local first responder communications systems that are necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d), including the development or enhancement of—

''(A) emergency operations centers;

''(B) processes and facilities for information sharing among different levels and first responder units; and

''(C) communications capabilities within individual firehouses, police precincts, or other centers of emergency operation.

''(b) STANDARD OF BASIC PREPAREDNESS.—Not later than September 30, 2005, the Under Secretary for Emergency Preparedness and Response shall establish a standard of basic preparedness for local first responders, which shall provide for maximum State flexibility.

''(c) GRANTS AUTHORIZED.—The Secretary may award need-based, competitive grants to States and units of local government to be used for basic personal equipment and communications enhancement needed to perform their disaster response, mitigation, and recovery missions.

''(d) APPLICATION.—

''(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Under Secretary for Emergency Preparedness and Response at such time, in such manner, and containing such information, including the safety and communications equipment to be purchased with grant funds, as the Under Secretary may reasonably require.

''(2) PRIORITY.—

''(A) IN GENERAL.—The Under Secretary shall give the highest priority to applicants demonstrating the greatest need for basic personal equipment and communication enhancements when compared to the standard of basic preparedness established under subsection (d).

''(B) INTERIM PRIORITY.—Until a standard of basic preparedness is established under subsection (d), the Secretary shall give highest priority to applicants that demonstrate the greatest need for basic personal equipment and communication enhancements when compared to the standard under consideration.

''(3) EVALUATION PLANS.—The Secretary shall use evaluation plans under consideration to help determine which applicants will receive grants under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 2005 through 2007, such sums as may be necessary to carry out this section, which shall remain available until expended.''.

SEC. 4. SAFE SCHOOLS THROUGH MENTAL HEALTH PROGRAM.

(a) GRANTS AUTHORIZED.—Subpart 2 of part A of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7131 et seq.) is amended by adding at the end the following:

''SEC. 4131. MENTAL HEALTH PROGRAMS.

''(a) PURPOSE.—The purpose of this section is to provide grants to States and local educational agencies—

''(1) to prepare for and respond to disasters or terrorism in or impacting schools;

''(2) to prevent avoidable disasters, such as in-school or school-related violence;

''(3) to establish community-sustainable mental health programs in schools; and

''(4) to train school personnel on mental health issues, including disaster and terrorism prevention, response, and mitigation.

''(b) FINDINGS.—Congress makes the following findings:

''(1) Schools occupy a unique place in the community. In addition to their main mission of educating children, they serve a public education role and a role in community organization.

''(2) Schools have new responsibilities in the homeland security era and in terms of disaster response. Schools often serve as community meeting places, centers of operation for disaster response, and shelters, and have a place in preventing some disasters from happening. Schools may also be called upon to fill novel roles in the case of a disaster, such as keeping children safe after normal school hours.

''(3) Some disasters, such as in-school violence, are largely preventable. Mental health professionals in schools may be able to anticipate and prevent school-related disasters and are better positioned to mitigate disaster effects.

''(4) After any disaster, people benefit from returning to their normal routine to whatever extent possible. Schools may be in the position to mitigate disaster–related stress.

''(c) DEFINITION.—In this section, the term 'eligible entity' means a public school or a local educational agency.

''(d) SAFE SCHOOLS THROUGH MENTAL HEALTH PROGRAM.—

''(1) GRANTS AUTHORIZED.—From funds made available to carry out this subpart under section 4003(2), the Secretary shall award grants to eligible entities to pay the Federal share of the cost of carrying out the activities described in paragraph (3).

''(2) APPLICATION.—An eligible entity that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including a certification that the eligible entity will provide the necessary State or local funding to continue the activities initiated with the grant during the 5-year period beginning on the date on which such grant is awarded.

''(3) USES OF FUNDS.—An eligible entity that receives a grant under this subsection may use the grant funds to—

''(A) train elementary school and secondary school teachers, administrators, and other professionals to—

''(i) identify and prevent avoidable disasters; and

''(ii) assist children in dealing with the aftermath of terrorism and disasters or other mental health issues;

''(B) provide for school-based mental health professionals to offer services in elementary and secondary schools;

''(C) provide mental health services to elementary and secondary school students who face, or have faced, disciplinary action, including students who have been suspended or expelled from school.

''(4) FEDERAL SHARE.—The Federal share of the cost of carrying out the activities under paragraph (3) shall be not more than—

''(A) 80 percent of the total cost of such activities, in the first year of the grant award;

''(B) 60 percent of the total cost of such activities, in the second year of the grant award;

''(C) 40 percent of the total cost of such activities, in the third year of the grant award;

''(D) 20 percent of the total cost of such activities, in the fourth year of the grant award; and

''(E) 0 percent of the total cost of such activities, in the fifth year of the grant award.

''(5) STATE AND LOCAL FUNDING.—If an eligible entity receiving a grant under this subsection fails to provide sufficient State or local funding, in accordance with paragraph (4), the eligible entity shall be subject to a penalty up to the amount received under this subsection, as determined by the Secretary, which shall be payable to the United States Treasury.

''(e) SCHOOL-BASED DISASTER MITIGATION REFUND PROGRAM.—

''(1) GRANTS AUTHORIZED.—From funds made available to carry out this subpart under section 4003(2), the Secretary, in an emergency declared by the President under title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 501 et seq.), shall award grants to eligible entities to pay the Federal share of the cost of carrying out the activities described in paragraph (3).

''(2) APPLICATION.—An eligible entity that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

''(3) USE OF FUNDS.—An eligible entity that receives a grant under this subsection shall use the grant funds to reimburse elementary and secondary schools for costs incurred by such schools—

''(A) during a disaster response; and

''(B) for in–school mental health counseling for a period of 13 months beginning on the date of the disaster.''.

(b) FEDERAL EMERGENCY ASSISTANCE.—Section 502(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5192(a)) is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(8) provide financial assistance to affected State and local governments for school-based community mental health counseling.''.

SEC. 5. HOMELAND SECURITY RESEARCH AND DEVELOPMENT GRANT PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) The Department of Homeland Security is responsible for funding the intramural and extramural research and development to address the Department's scientific and technological needs and requirements.

(2) Funding has been appropriated to the Department of Homeland Security to carry out significant levels of scientific development, and this funding will likely increase in the future.

(3) Terrorist threats against the United States are not restricted to a single geographic area, terrorist group, or method of threat. Undefended borders make terrorist attacks possible in places that have never had to prepare for, or respond to, terrorism.

(4) Every State must be prepared for disasters and will incur costs associated with homeland security.

(5) States experience varying levels of potential homeland security threats and homeland security concerns vary geographically. Addressing these threats requires regional and local expertise, thus the scientific and technological workforce and training should not be overly centralized.

(6) Academic research and development funding has not been distributed equitably in the past. Congress has taken steps to resolve this problem. Correcting this inequity will provide beneficial results for science and technology training and research.

(b) PURPOSE.—The purpose of this section is to establish a competitive grant program for homeland security research and development.

(c) HOMELAND SECURITY RESEARCH AND DEVELOPMENT GRANT PROGRAM.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.) is amended by adding at the end the following:

''SEC. 314. COMPETITIVE RESEARCH GRANT PROGRAM.

''(a) ESTABLISHMENT.—The Secretary, in consultation with the Under Secretary for Science and Technology, shall establish a Homeland Security Competitive Research Grant Program (referred to in this section as the 'Program') to more equitably distribute Federal research and development funds by awarding competitive grants to universities and colleges in eligible States to conduct research projects relating to homeland security.

''(b) ELIGIBLE STATES.—During fiscal years 2005 and 2006, colleges and universities located in States and territories that qualify for the National Science Foundation's EPSCoR program or the National Institutes of Health IDeA program shall be eligible for funding under the Program.

''(c) RESPONSIBILITIES.—The Under Secretary for Science and Technology shall—

''(1) ensure that not less than 15 percent of the Department's overall academic research funding is allocated to universities and colleges in eligible States;

''(2) establish a cofunding mechanism for States with academic facilities that have not fully developed security-related science and technology to support burgeoning research efforts by the faculty or link them to established investigators;

''(3) provide for conferences, workshops, outreach, and technical assistance to researchers and academic institutions in eligible States on topics related to developing science and technology expertise in areas of high interest and relevance to the Department;

''(4) monitor the efforts of States to develop programs that support the Department's mission;

''(5) implement a merit review program, consistent with program objectives, to ensure the quality of research conducted with Program funding; and

''(6) provide annual reports on the progress and achievements of the Program to the Secretary.

''(d) ANNUAL REPORT.—Not later than March 15 of each year, the Under Secretary for Science and Technology shall submit a report to Congress on the implementation of the Program.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) $5,000,000 for fiscal year 2005 to carry out subsection (c)(3); and

''(2) such sums as may be necessary for fiscal year 2006 to carry out this section.''.

SEC. 6. HOMELAND SECURITY RESEARCH EXPANSION GRANT PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) The Department of Homeland Security should fund research, which explores the innovative human dimensions of homeland security.

(2) Infrastructure and transportation systems, and the systems designed to protect them, are only as effective as their operators and users.

(3) Because communication before, during, and after disasters is critical, the understanding of behavioral, psychological, and social sciences in promoting effective communications with homeland security goals in mind is vital to the department's mission.

(4) Several areas of social science are relevant to homeland security, including—

(A) theories and data regarding threat communication and the psychological impacts of such threats;

(B) citizen response to disaster;

(C) group behavior in response to a threat or actual disaster;

(D) theories and data about the impact of sustained attention and vigilance on reasoning; and

(E) risk analysis and decision-making and their application to homeland security.

(5) Since the primary goal of terrorism is to disrupt social systems, the Department of Homeland Security should support research on how attitudes and beliefs about terrorism impact—

(A) consumer confidence;

(B) population mobility;

(C) decisions about childcare;

(D) job behaviors; and

(E) attitudes toward immigrants, political institutions, and leaders.

(6) Homeland security efforts would benefit from research on—

(A) the selection, management, and training of security personnel and first responders;

(B) the impact of stereotyping and marginalization of groups;

(C) hate crimes;

(D) the emergence and maintenance of fundamentalist, extremist, and antigovernment groups within the United States; and

(E) protection against the acts inspired by the groups described in subparagraph (D).

(b) PURPOSE.—The purpose of this section is to establish a program to award research grants to examine the social dimensions of terrorism.

(c) RESEARCH EXPANSION GRANTS.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), as amended by section 5, is further amended by adding at the end the following:

''SEC. 315. RESEARCH EXPANSION GRANTS.

''(a) IN GENERAL.—The Secretary shall award research grants to colleges and universities to—

''(1) analyze group dynamics during periods of extreme stress, including how first responders—

''(A) react during such periods;

''(B) can be inoculated to stress; and

''(C) can help mitigate the stress and social disruption that often accompanies emergency situations;

''(2) analyze the social and cultural factors that may affect the performance of first responder groups;

''(3) expand human factors research to all other modes of transportation including the use of infrastructure and transportation systems under evacuation circumstances;

''(4) develop and demonstrate compliance with operability standards for new technologies designed by human factors experts in conjunction with users;

''(5) examine the decision making of voluntary first responders under extended periods of disaster, including whether volunteer first responders would report to their primary jobs or their first responder positions if simultaneously called to both; and

''(6) understand how the Homeland Security Advisory System operates as a useful communication tool for citizens.

''(b) APPLICATION.—Each college and university 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.

''(c) ANNUAL REPORTS.—

''(1) REPORT TO SECRETARY.—Grant recipients shall submit an annual report to the Secretary containing specific research findings that may be used to improve emergency preparedness and response efforts.

''(2) REPORT TO CONGRESS.—The Secretary shall submit an annual report to Congress on the grant program authorized by this section.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $40,000,000 for each of the fiscal years 2005 through 2007.''.

By Mr. DOMENICI:

S. 2460. A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, water is the life's blood for New Mexico. When the water dries up in New Mexico, so will many of its communities. As such, the scarcity of water in New Mexico is a dire situation. Unfortunately, the New Mexico Office of the State Engineer (NM OSE) lacks the tools necessary to undertake the Herculean task of effectively managing New Mexico's water resources.

Today, I introduce legislation that would allow New Mexico to make informed decisions about its limited water resources.

In order to effectively perform water rights administration, as well as comply with New Mexico's compact deliveries, the State Engineer is statutorily required to perform assessments and investigations of the numerous stream systems and ground water basins located within New Mexico. However, the NM OSE is ill equipped to vigorously and comprehensively undertake the daunting but critically important task of water resource planning. At present, the NM OSE lacks adequate resources to perform necessary hydrographic surveys and data collection. As such, ensuring a future water supply for my home state requires that Congress provide the NM OSE with the resources necessary to fulfill its statutory mandate.

The bill I introduce today would create a standing authority for the State of New Mexico to seek and receive technical assistance from the Bureau of Reclamation and the United States Geological Survey. It would also provide the NM OSE the sum of $12.5 million in federal assistance to perform hydrologic models of New Mexico's most important water systems. This bill would provide the NM OSE with the best resources available when making crucial decisions about how best preserve our limited water stores.

Ever decreasing water supplies in New Mexico have reached critical levels and require immediate action. The Congress cannot sit idly by as water shortages cause death to New Mexico's communities. I hope the Senate will give this legislation its every consideration.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2460

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 ''New Mexico Water Planning Assistance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey.

(2) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. COMPREHENSIVE WATER PLAN ASSISTANCE.

(a) IN GENERAL.— On the request of the Governor of the State and subject to subsections (b) through (e), the Secretary shall—

(1) provide to the State technical assistance and grants for the development of comprehensive State water plans;

(2) conduct water resources mapping in the State; and

(3) conduct a comprehensive study of groundwater resources (including potable, brackish, and saline water resources) in the State to assess the quantity, quality, and interaction of groundwater and surface water resources.

(b) TECHNICAL ASSISTANCE.—Technical assistance provided under subsection (a) may include—

(1) acquisition of hydrologic data, groundwater characterization, database development, and data distribution;

(2) expansion of climate, surface water, and groundwater monitoring networks;

(3) assessment of existing water resources, surface water storage, and groundwater storage potential;

(4) numerical analysis and modeling necessary to provide an integrated understanding of water resources and water management options;

(5) participation in State planning forums and planning groups;

(6) coordination of Federal water management planning efforts;

(7) technical review of data, models, planning scenarios, and water plans developed by the State; and

(8) provision of scientific and technical specialists to support State and local activities.

(c) ALLOCATION.—In providing grants under subsection (a), the Secretary shall, subject to the availability of appropriations, allocate—

(1) $5,000,000 to develop hydrologic models and acquire associated equipment for the New Mexico Rio Grande main stem sections and Rio Taos and Hondo, Rios Nambe, Pojoaque and Teseque, Rio Chama, and Lower Rio Grande tributaries;

(2) $1,500,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for the San Juan River and tributaries;

(3) $1,000,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for Southwest New Mexico, including the Animas Basin, the Gila River, and tributaries;

(4) $4,500,000 for statewide digital orthophotography mapping; and

(5) such sums as are necessary to carry out additional projects consistent with subsection (b).

(d) NON-REIMBURSABLE AND NO COST-SHARING.—Any assistance or grants provided to the State under this Act shall be made on a non-reimbursable basis and without a cost-sharing requirement.

(e) AUTHORIZED TRANSFERS.—On request of the State, the Secretary shall directly transfer to 1 or more Federal agencies any amounts made available to the State to carry out this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $2,500,000 for each of fiscal years 2005 through 2009.

By Mr. DEWINE (for himself and Mr. KENNEDY):

S. 2461. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, today I join our colleague from Massachusetts, Senator KENNEDY, to introduce a bill

designed to help protect consumers—especially children—from the dangers of tobacco. Simply, our bill would finally give the Food and Drug Administration (FDA) the authority it needs to effectively regulate the manufacture and sale of tobacco products.

I say finally, because there are some tobacco proponents who would have you believe that the Master Settlement Agreement, which was signed in 1998 by 46 States, resolved the issue of youth tobacco use by imposing advertising restrictions.

I say finally, because my colleagues—first Senator MCCAIN, then Senator FRIST, then Senator GREGG, and then Senator KENNEDY and I—have been seeking FDA regulation of tobacco products since the mid to late 1990's.

And, I say finally, because the bill that we are introducing today is the product of long and hard discussions and negotiations that I have had with Senator KENNEDY and public interest groups and industry. Our bill has the support of Campaign for Tobacco Free Kids. Our bill has the support of Philip Morris. Our bill has the support of the American Heart Association, the American Lung Association, and the American Cancer Association. It is a bill that I am proud of, that is worthy of the Senate's consideration, and that will provide the FDA—finally—with strong and effective authority over the regulation of tobacco products.

I realize full well that tobacco users and non-users, alike, recognize and understand that tobacco products are hazardous to their health. We all know that smoking is not a healthy habit. But, that's an obvious point in comparison to the fact that right now, many consumers, including smokers, are surprised to learn that no Federal agency has the authority to require tobacco companies to list the ingredients that are in their products—things like trace amounts of arsenic, formaldehyde, and ammonia. And, no Federal agency has the authority to inspect tobacco manufacturers—how the cigarette and smokeless tobacco products are made, whether the manufacturers' machines and equipment are clean, etc.

While simply listing the ingredients, toxic as they may be, might not seem like much to some, think of it this way: Current law makes sure we know what's in products designed to help people quit smoking, like ''the patch'' or Nicorette gum, but not the very products that get people addicted in the first place—the cigarettes. That is absolutely absurd!

Think about this: Right now, the Food and Drug Administration (FDA) requires Philip Morris/Altria to print the ingredients in its Kraft ''Macaroni and Cheese,'' but not the ingredients in its cigarettes—a product that contributes to the deaths of more than 440,000 people a year.

Right now, the FDA requires Philip Morris-owned Nabisco to print the ingredients contained in ''Oreo Cookies'' and ''Ritz Crackers,'' but not the ingredients in its cigarettes—even though cigarettes cause one-third of all cancer deaths and 90 percent of lung cancer deaths. It is unfathomable to me that we would require the listing of ingredients on these products, yet not require the listing of ingredients for one of the leading causes of death and disease.

Right now, the FDA requires the printed ingredients for chewing gum, lipstick, bottled water, and ice cream, but not for cigarettes—a product that causes 20% of all heart disease deaths and is the leading cause of preventable death in the United States.

Think about this: If a company wants to market a food product as ''fat-free'' or ''reduced-fat'' or ''lite,'' that company is required to meet certain standards regarding the number of calories or the amount of fat grams in that product. Yet, cigarette companies can call a cigarette a ''light'' or ''mild'' and not reveal a thing about the amount of tar or nicotine or arsenic in that supposedly ''light'' cigarette.

Not having access to all the information about this deadly product just makes no sense, and it is something that needs to change. By introducing this bill, we are finally saying that we are not going to let tobacco manufacturers have free reign over their markets and consumers any more.

Today, we are taking a step toward making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place. With this bill, we are not just saying ''buyer beware.'' We are saying ''tobacco companies be honest.'' We are saying ''tobacco companies stop marketing to innocent children.'' We are saying ''tobacco companies tell consumers about what they are really buying.''

The legislation that Senator KENNEDY and I are introducing would do just that.

One of the most dramatic changes our bill makes is that tobacco products will now have to be approved before they reach consumer hands. It just makes sense that tobacco products should not be able to imply that they may be safer or less harmful to consumers because they use descriptors such as ''light'' or ''mild'' or ''low'' to characterize the level of a substance in a product. The National Cancer Institute has found that many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. Our bill would require specific approval by the FDA to use those words, so that consumers could be informed.

For the first time ever, all new tobacco products entering the market would have to be approved by the FDA. Obviously, we already know that smoking is a health risk. But, what we don't know about is the harm caused by or what adverse health effects are created by the other ingredients in tobacco products or by how the tobacco is burned. There are tobacco products on the market that are not conventional cigarettes. They have carbon filters running down the center of them. They are sophisticated products that burn tobacco differently, that affect the body differently, and that may cause people to smoke them differently.

According to the Department of Health and Human Services, in an October article of the Journal of the National Cancer Institute, ''the only proven method to reduce tobacco-related cancer risk is to stop smoking.'' Yet, often times, people cannot quit. It is very difficult to quit ingesting an addictive product. People are addicted to the nicotine in the tobacco product and are just simply unable to quit using it. So, tobacco companies have responded by developing and marketing tobacco products that purport to be ''reduced-risk'' or ''safer.''

Take, for example, a person who smokes Marlboro cigarettes—just plain Marlboro cigarettes, the ones in the red package. Let's say that person would like to quit smoking, has tried to quit smoking a number of times, but just hasn't been successful. So instead of quitting outright, that person figures they will switch the type of cigarette they smoke to a cigarette that has the implied claim of being ''safer''—like a ''light'' cigarette or a ''mild'' cigarette or a ''low tar'' cigarette. Those cigarettes have not been found to be any safer? In fact, just the opposite has been discovered.

In a 2001 National Cancer Institute publication, they wrote the following:

> The tobacco companies set out to develop cigarette designs that markedly lowered the tar and nicotine yield results as measured by the Federal Trade Commission (FTC) testing method. Yet, these cigarettes can be manipulated by the smoker to increase the intake of tar and nicotine. The use of these ''decreased risk'' cigarettes have not significantly decreased the disease risk. In fact, the use of these cigarettes may be partly responsible for the increase in lung cancer for long-term smokers who have switched to the low-tar/low-nicotine brands. Finally, switching to these cigarettes may provide smokers with a false sense of reduced risk, when the actual amount of tar and nicotine consumed may be the same as, or more than, the previously used higher yield brand.

So the products that tobacco companies develop and market as being ''safer'' are not safer. Rather than people quitting smoking entirely, they are often misled into thinking that the ''light'' or ''mild'' cigarettes that they switch to are better for them. In addition, people may begin to start smoking because they think some of these products aren't so bad for them—that the products have been made safer or better for them somehow and are okay to smoke.

Tobacco companies are able to make these implied health claims about their products because they are not regulated. Consumers have no choice but to trust the tobacco companies to reveal the ingredients and marketing claims about their products. That is just absurd to me. These are all things that should be examined, reviewed, and commented on by the Food and Drug

Administration to determine whether it is appropriate for these products to be marketed as ''reduced-risk'' products, so the public knows what they are choosing to consume.

Tobacco advertising is in magazines and on billboards along the highway. Tobacco advertising is in convenience stores, along the aisles and at the checkout counter right beside the candy where children are likely to see it. Tobacco advertising is at sporting events, part of promotional items, where consumers can ''buy 1 get 1 free.'' Tobacco advertising is on the Internet and in the daily delivery of mail.

Our bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing—consistent with the First Amendment—that targets our children. Our bill would require advertisements to be in black and white text only and would define adult publication in terms of readership.

An issue that is related to advertising and marketing of tobacco products has to do with the flavored tobacco products, which clearly target our children. We have probably all seen the flavored cigarettes—flavors like strawberry, chocolate, and wild rum. The scent of strawberry filters through the unopened pack of cigarettes. And guess what, the cigarettes smell like candy. A recent New York Times article described the scent of chocolate flavored cigarettes as if ''someone had lifted the lid on a Whitman Sampler.''

I can't speak for every parent, but I know my 8 grandchildren like candy, and they like the smell of chocolate, and they would be curious to try something that smells or tastes like candy. Cigarettes shouldn't be flavored and marketed in such a way to attract children and to encourage children to smoke. Our bill bans the use of flavors such as strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, coffee and other flavorings that would attract children to the product.

Despite the fact that 40 million Americans use tobacco products, many of them do not know what is inside the cigarette or the tobacco product they ingest. They do not know the ingredients or the constituents, like tar or nicotine, that are in the products they use. Consumers do not know what additives are included in the product. Additives like ammonia or urea, both of which may make the tobacco product more addictive because they increase the delivery of nicotine. Tobacco companies do not disclose the specific ingredients in their products because they don't have to. Tobacco products are unregulated.

Our legislation would give consumers more information about what's in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products.

It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco, paper, or filter.

It would require a description of the content, delivery, and form of nicotine in each tobacco product.

It would require information on the health, behavioral, or physiologic effects of the tobacco products.

I think it is equally important that I mention what our bill does not do. Here are some of the areas where authority is not conferred to FDA: Our bill does not allow FDA to ban tobacco products or to eliminate nicotine from a tobacco product. The bill ensures that FDA will not have the power to use its ''performance standard'' authority to ban cigarettes, smokeless tobacco or any other category of tobacco products, or to reduce their nicotine yields to zero.

Our bill does not allow FDA to establish a minimum smoking age higher than 18. The bill explicitly forbids FDA from establishing a minimum age higher than 18 years of age to purchase tobacco products.

Our bill treats all tobacco retailers equally. Our bill specifically provides that FDA can't prohibit the sale of tobacco products in any particular category of retail outlet. Our bill forbids FDA from creating a more permissive set of advertising rules for adult-only establishments. This provision protects retailers and convenience store owners.

Finally, I would like to make a comment about the tobacco farmers. There has been a lot of talk recently about the need for a buyout for our Nation's tobacco farmers. My colleagues, Senator MCCONNELL and Senator DOLE, have been working tirelessly to craft a buyout bill for tobacco farmers. They need a buyout—and the Congress should give them one. The Senate needs to pass the buyout, but the buyout needs to be passed along with this FDA bill. I look forward to working with my colleagues from the tobacco-growing states to make this happen.

The bill that Senator KENNEDY and I introduce today gives the FDA the authority to regulate a product that has gone unregulated for far too long—a product that for the past century has not revealed its ingredients to the consumer—a product whose manufacturing facilities are not inspected or accountable for following good manufacturing practices—a product that is never reviewed or approved before reaching the hands of 40 million consumers, many of whom are just children. Congress needs to put an end to this. Congress should put an end to the marketing of tobacco products to our children. Congress should put an end to the ability of tobacco companies to make claims, whether they are implied claims or direct claims, about their products. Congress should put an end to tobacco companies putting any ingredient they want into their products without disclosing it to the consumer. It is time Congress give the FDA authority to it needs to fix these problems.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2461

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 ''Family Smoking Prevention and Tobacco Control Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

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

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

(3) Nicotine is an addictive drug.

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

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

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

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

(8) Federal and State public health officials, the public health community, and the

public at large recognize that the tobacco industry should be subject to ongoing oversight.

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

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

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

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

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

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

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

(16) In 2001, the tobacco industry spent more than $11,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

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

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

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

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

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

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

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act are—

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

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

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

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

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

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

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

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

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

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

SEC. 4. SCOPE AND EFFECT.

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

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

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

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

SEC. 5. SEVERABILITY.

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

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

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

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

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

''(2) The term 'tobacco product' does not mean—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

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

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

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

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

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

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

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

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

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

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

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

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

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

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

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

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

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

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

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

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

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

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

''(19) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef,

Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

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

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

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

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

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

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

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

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

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

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

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

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

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

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

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

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

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

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

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

''(D) the statement required under section 921(a),

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

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

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

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

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

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

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

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

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

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

''(B) a brief statement of—

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

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

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

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

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

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

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

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

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

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

''(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

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

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

''(1) Any or all documents (including underlying scientific information) relating to

research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

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

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

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

''(c) TIME FOR SUBMISSION.—

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

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

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

''(d) DATA LIST.—

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

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

''(e) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

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

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

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

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

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

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

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

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

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

''(i) REGISTRATION INFORMATION.—

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

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

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

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

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

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

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

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

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

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

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003, that is in compliance with the requirements of this Act; and

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

''(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

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

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

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

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

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

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

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

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

''(d) RESTRICTIONS.—

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

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

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

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

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

''(3) LIMITATIONS.—

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

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

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

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

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

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

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

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

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

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

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

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

''(2) EXEMPTIONS; VARIANCES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

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

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

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

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

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll your own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself such power.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 15-month period, until the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

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

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

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the

evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless approval of an application filed pursuant to subsection (d) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(A) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF APPROVAL.—

''(i) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the approval of an application under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the approval of the application is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—No distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco related disease.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in paragraph (1) and subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 554(b)(4) of title 5, United States Code, shall be treated as trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C.
App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $$300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required

under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the Executive Branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'.
'WARNING: Tobacco smoke can harm your children'.
'WARNING: Cigarettes cause fatal lung disease'.
'WARNING: Cigarettes cause cancer'.
'WARNING: Cigarettes cause strokes and heart disease'.
'WARNING: Smoking during pregnancy can harm your baby'.
'WARNING: Smoking can kill you'.
'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'.
'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(5) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.''.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding a the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'.

'WARNING: This product can cause gum disease and tooth loss'.

'WARNING: This product is not a safe alternative to cigarettes'.

'WARNING: Smokeless tobacco is addictive'.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

Mr. KENNEDY. Mr. President, today, Senator DEWINE and I are introducing legislation to give the Food and Drug Administration broad authority to regulate tobacco products for the protection of the public health. We cannot in good conscience allow the Federal agency most responsible for protecting the public health to remain powerless to deal with the enormous risks of tobacco, the most deadly of all consumer products.

This legislation is a fair and balanced approach to FDA regulation. It creates a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gives FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

The stakes are vast. Five thousand children have their first cigarette every day, and two thousand of them become daily smokers. Nearly a thousand of them will die prematurely from tobacco-induced diseases. Smoking is the number one preventable cause of death in the Nation today. Cigarettes kill well over 400,000 Americans each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, suicide, and fires combined. Our response to a public health problem of this magnitude must consist of more than half-way measures.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over $9 billion a year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising

designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. It grants FDA full authority to regulate tobacco advertising ''consistent with and to the full extent permitted by the First Amendment.''

FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. This legislation will require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

We believe that there is an excellent chance of enacting this bill this year. The interest of tobacco-state members in passing a tobacco farmers' quota buyout provides a golden opportunity. By joining a strong FDA bill with relief for tobacco farmers, we can assemble a broad, bipartisan coalition to accomplish both of these goals during this session. This approach is supported by the public health community and by farmers' organizations. Most importantly, it is the right thing to do for America's children.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, and Mr. ALLEN):

S. 2462. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor and Pensions.

Mr. WARNER. Mr. President, I rise today to introduce an important bill related to education and our national, homeland, and economic security. I am pleased to be joined in this bipartisan effort with Senators LIEBERMAN, ROBERTS, and ALLEN, and I am grateful to each of them for working closely with me in crafting this legislation.

Some 50 plus years ago, I was a high school drop-out. I left school at the age of 17 to enlist in the Navy to serve this country in World War II. In the military, I earned the rank of Petty Officer 3rd Class, electronic technician's mate. And, it was in this role that I earned my first bit of technical education.

In return for my service, I was lucky enough to earn a GI Bill that helped me go to college at Washington & Lee University where I earned a degree in engineering. Subsequently, I joined the Marines and earned a second GI Bill that allowed me to attend the University of Virginia where I earned my law degree.

Without the GI bill, I certainly might not have earned the education that I was fortunate enough to receive, and I certainly would not be standing here today in the United States Senate. That is why I feel so very strongly that we must support education in this country. Today's generation of students should have at least the same opportunity to earn their education that I had, if not more.

We are fortunate in America that we have several important Federal programs to help make education more affordable for today's generation. Whether it is the GI Bill, the Americorp stipend, subsidized and unsubsidized Stafford loans, or any number of other Federal education programs, many Americans today who wish to obtain higher education have access to a variety of educational programs. I support strengthening these programs to increase access to higher education.

Of all the educational grant programs, the Pell Grant program is the largest source of grant aid to help students pay for the costs associated with higher education. Eligibility for Pell Grants is based on financial need, and this year alone, Pell Grants helped 5.3 million undergraduate students attain higher education.

Now, I am a strong supporter of the Pell Grant program. The $13.1 billion

that is being spent by the Federal Government on Pell Grants in fiscal year 2004 gives students access to higher education that otherwise might not have such access. But, I also recognize that the Pell Grant program was created in 1972 when the world was entirely different.

Our world today is much more dangerous than it was back then, and much more dangerous than when I served this country with brief tours of duty in World War II and the Korean War.

Today, while we're sleeping, people in other parts of the world are contriving of every possible way to take our business, our economy, our security, and our freedoms away from us. September 11, 2001, should remind us of this.

Once, great oceans protected this Nation. But now, with the advent of the Internet and other modern technologies, the world is more connected than ever, and America is more vulnerable than ever in a lot of ways. Computer hackers all over the world try on a daily basis to hack into government computers. If successful, this could wreak havoc. Furthermore, each day, for whatever reason, people create computer viruses, and even the smallest virus can cost our economy billions of dollars.

Simply put, in today's day and age, our country faces new challenges like never before. I ask—are we prepared to meet these challenges?

Unfortunately, our institutions of higher learning are not producing enough American graduates with certain majors to meet our new challenges. In engineering, math, computer sciences, hard sciences, and certain foreign languages—America is coming up short.

The statistics are alarming: the Third International Math and Science Study reports that U.S. 12th graders scored in only the 7th percentile in math worldwide, and only the 3rd percentile in science. This is near the bottom among major industrialized nations. The National Science Foundation reports that the fraction of U.S. Bachelor degrees in science and engineering have been declining for nearly 2 decades when compared to the rest of the world. While nearly two-thirds of Bachelor degrees in China and Singapore are science or engineering, they account for only about 17 percent in the United States. In fact, we currently rank 61st out of the 63 countries surveyed. Similarly, the National Science Board reports that the fraction of foreign born scientists and engineers in the U.S. workforce rose to an all time high by 2000. Amazingly, 38 percent of all people working in the United States with doctorate degrees in science or engineering are now foreign born.

The effects of these educational trends are already being felt in various important ways. For example: the American Physical Society reports that the proportion of articles by American authors in the Physical Review, one of the most important research journals in the world, has hit an all time low of 29 percent, down from 61 percent in 1983. And the U.S. production of patents, probably the most direct link between research and economic benefit, has declined steadily relative to the rest of the world for decades, and now stands at only 52 percent of the total.

Despite these statistics, up to now, this country has been able to meet its new challenges by importing brain power from foreign countries. We are fortunate to have so many smart minds from other countries willing to come to the United States to fill critical science and engineering positions. However, the need for home-grown talent is becoming more and more apparent.

First, international competition for this foreign brain power has become intense. As the National Science Board notes, ''Governments throughout the world recognize that a high-skill S&E workforce is essential for economic strength. Countries beyond the United States have been taking action to . . . attract foreign students and workers, and raise the attractiveness to their own citizenry of staying home or returning from abroad to serve growing national economies and research enterprises.'' This increased global competition for science and engineering workers ''comes at a time when demand for their skills is projected to rise significantly—both in the United States and throughout the global economy.''

Without action on our part, though, America will lose out in the competition for these technically talented workers. According to the National Science Board, by 2010, if current trends continue, significantly less than 10 percent of all physical scientists and engineers in the world will be working in America.

Increased global competition is not the only reason, though, that we have to promote a home-grown S&E workforce in America. In the post 9/11 era, it is more important than ever from a security perspective to have American citizens performing certain tasks.

The National Science Board put it best when they said, ''The ready availability of outstanding science and engineering talent from other countries is no longer assured, as international competition for the science and engineering workforce grows. Threats to world peace and domestic security create additional constraints on employment of foreign nationals in the United States.''

I think the message is clear: Our S&E workforce is in crisis. If we do not act to encourage more American citizens to enter the high shortage areas in engineering, math, and science, then America may lose its historical advantage as the world's innovator.

The consequences of this trend are also significant from a national security perspective. The defense-related research that goes into giving our men and women in the Armed Forces the best technology and equipment requires the special skills of engineers, scientists and computer scientists. Our military has always recognized these facts, and historically has been a tremendous supporter of science and engineering on a broad scale, from applied research to the most pure and esoteric of pursuits.

Let me quote some numbers which make clear what a huge investment our defense community makes in science and engineering: According to the National Science Foundation, the Defense Department is by far the largest single supporter of science and technology in the Federal Government, accounting for about half of the total research dollars spent; the proportion of defense funding for University research in critical disciplines is very significant. For example, 90 percent of basic astronautical research is defense-funded. And, as you all must realize, University research is vastly important for training subsequent generations of high-quality researchers; and in terms of technical manpower, defense-related scientists and engineers make up nearly 46 percent of the total Federal workforce. And, this includes 28 percent of all physical scientists, 48 percent of computer scientists and mathematicians, and 67 percent of all engineers.

For well over a century these investments have given us advantages in technological fields that have provided our men and women of our Armed Forces the most advanced and powerful tools in existence, from submarines and airplanes to unmanned vehicles and the Internet. These technologies not only give our military an overwhelming advantage on the battlefield, they also save many lives.

Yet, alarmingly, it is in the precise disciplines that produce these technologies and equipment where we see some of the greatest potential shortages in our science and engineering workforce. Numerous studies show that the number of domestic students in these critical fields has been falling steadily for years. And, without major investments to encourage more Americans to enter these critical fields, America is going to lose its status as the world's innovator and be placed in the precarious situation of having to rely on foreign countries to sell us the best equipment and the best technology for our troops. That is why it is paramount for America, from within, to produce the home-grown technical talent it needs.

The consequences of inaction are enormous. And, while America's challenge is substantial, it is not insurmountable. Fortunately, we already have an existing Federal program up and running that, if modified, can help.

Under current law, the $13.1 billion a year Pell Grant program awards recipients grants regardless of the course of study that the recipient chooses to pursue. So, under current law, 2 people

from the same financial background are eligible for the same grant even though one chooses to major in the liberal arts while the other majors in engineering or science.

While I believe studying the liberal arts is an important component to having an enlightened citizenry, I also believe that given the unique challenges we are facing in this country, it is appropriate for us to add an incentive to the Pell Grant program to encourage individuals to pursue courses of study where graduates are needed to meet our national security, homeland security, and economic security needs.

That is why today I am introducing this legislation. The legislation is simple. It provides that at least every 2 years, our Secretary of Education, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and others, should provide a list of courses of study where America needs home-grown talent to meet our national, homeland, and economic security needs. Those students who pursue courses of study in these programs will be rewarded through a doubling of their Pell Grant to help them with the costs associated with obtaining their education.

We in the Congress have an obligation when expending taxpayer money, to do so in a manner that meets our Nation's needs. Our Nation desperately needs more highly trained domestic workers. That is an indisputable fact. And, in the Pell Grant program, we have over $13 billion that is readily available to help meet this demand.

In closing, our world is vastly different today than it was when the Pell Grant program was created in 1972. My legislation is a commonsense modification of the Pell Grant program that will help America meet its new challenges. I hope my colleagues will join me in this endeavor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2462

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 ''21st Century Federal Pell Grant Plus Act''.

SEC. 2. RECIPIENTS OF FEDERAL PELL GRANTS WHO ARE PURSUING PROGRAMS OF STUDY IN ENGINEERING, MATHEMATICS, SCIENCE, OR FOREIGN LANGUAGES.

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended by adding at the end the following:

''(C)(i) Notwithstanding subparagraph (A) and subject to clause (iii), in the case of a student who is eligible under this part and who is pursuing a degree with a major in, or a certificate or program of study relating to, engineering, mathematics, science (such as physics, chemistry, or computer science), or a foreign language, described in a list developed or updated under clause (ii), the amount of the Federal Pell Grant shall be the amount calculated for the student under subparagraph (A) for the academic year involved, multiplied by 2.

''(ii)(I) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Director of the National Science Foundation, shall develop, update not less than once every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries and Director shall consider the following:

''(aa) The current engineering, mathematics, and science needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(II) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Secretary of State, shall develop, update not less than once every 2 years, and publish in the Federal Register, a list of foreign language degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries shall consider the following:

''(aa) The foreign language needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(iii) Each student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, certificate, or program described in a list published under subclause (I) or (II) of clause (ii) shall continue to be eligible for the increased Federal Pell Grant amount in subsequent academic years if the degree, major, certificate, or program, respectively, is subsequently removed from the list.

''(iv)(I) If a student who received an increased Federal Pell Grant amount under clause (i) changes the student's course of study to a degree, major, certificate, or program that is not included in a list described in clause (ii), then the Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive under this section for subsequent academic years by an amount equal to the difference between the total amount the student received under this subparagraph and the total amount the student would have received under this section if this subparagraph had not been applied.

''(II) The Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive in subsequent academic years by dividing the total amount to be reduced under subclause (I) for the student by the number of years the student received an increased Federal Pell Grant amount under clause (i), and deducting the result from the amount of Federal Pell Grant assistance the student is eligible to receive under this section for a number of subsequent academic years equal to the number of academic years the student received an increased Federal Pell Grant amount under clause (i).''.

Mr. LIEBERMAN. Mr. President, I rise today to join my esteemed colleague from the State of Virginia, Senator WARNER, in introducing The 21st Century Pell Grant Plus Act. This bill is intended to provide an immediate and direct response to the urgent need in this country to encourage greater numbers of graduates in the critical areas of math and science and foreign language. Specifically, our bill would provide financial incentives to American college students, via enhanced Pell grants, to pursue degrees in science, engineering, mathematics, and key foreign languages. These subject areas are critical for meeting our nation's economic and homeland security needs.

Although the number of jobs requiring scientific and technical skills is projected to grow over the next decade, the last ten years have witnessed a significant decline in the number of relevant baccalaureate degrees awarded by U.S. institutions of higher education. Recent reports have highlighted the decline in science and engineering graduates in our country, which has threatened the United States' worldwide dominance in science and innovation. Foreign advances in basic science now often exceed those in the United States. To exacerbate the matter, future demographics signal that many of the presently employed engineers and scientists who entered the workforce in the 1960s and 1970s will retire during the next decade. Unfortunately, their children are not following them into the same professions.

Many of our competitors in the world market are not experiencing these same problems. The universities in some European and Asian countries are attracting science and engineering majors at much higher rates than the universities in the United States. For example, China graduated three times as many engineering graduates than the United States did in 1999. In 2000, there were 24 nations who awarded a higher percentage of science and engineering degrees than the United States did. In that same year, the percentage of students earning science degrees in Finland was 2.5 times higher than in the United States. Graduate education trends are no better. According to National Science Foundation indicators,

between 1986 and 1999, China produced science and engineering doctorates at an average annual growth rate of 36.5 percent. By comparison, the United States had an average annual growth rate of just 2.2 percent during the same period. We must also keep in mind that of all the science and engineering doctoral degrees earned in the United States in 1999, 48.6 percent of them were earned by non-U.S. citizens.

I noted in my recent offshore outsourcing study, now posted on my website, that as global competition for technical talent intensifies, our economic security depends on producing U.S.-born science and engineering graduates. Not being able to fill the jobs in this country with U.S. citizens is also a threat to our national security. Thus, it is imperative that our higher education system, which is the best in the world, train more individuals in science and technology.

Our bill provides a simple and efficient solution to this problem. Under our proposal, any student who qualifies for a Pell Grant and majors in science, engineering, mathematics, or certain foreign languages would be eligible to receive a grant that is double the size of the original award. Every two years the Secretary of Education, in consultation with the Secretaries of Defense and Homeland Security, and the director of the National Science Foundation will develop a list of engineering, mathematics, science, and foreign language majors, degrees, certificates, or programs that if pursued by a student, may enable that student to receive the increased Federal Pell Grant amount.

Science, engineering, technology, and innovation are key to our economic growth, prosperity, and security. The 21st Century Federal Pell Grant Plus Act aims to strengthen our technical workforce, and thus our economic and homeland security, by encouraging more of our college students to study science, engineering, mathematics, and foreign languages. I urge my colleagues to act favorably on this measure.

I would also like to take this opportunity to pay tribute to a man who some have appropriately described as a true gentleman as well as an outstanding leader in engineering and science. Dr. John H. Hopps died on May 14, 2004 at 65 years of age. He has advised my office on our nation's science talent issues for the past three years, and I want to dedicate today's new bill to him. At the time of his death, he was serving as Deputy Under Secretary of Defense for Research and National Laboratories, and Deputy Director of Defense Research and Engineering. He accepted this dual position out of a strong sense of national service after the September 11 attack. The science community has lost a member who has served as an inspiration to many, including members of my staff, for his commitment to his profession and his unique approaches to developing our technical workforce. Among his many achievements, including many in University education and at NSF, I would note that Dr. Hopps was the author of numerous scholarly and scientific papers, and was recognized as one of the top African Americans in Technology in 2004. I might also mention that in addition to his intellectual prowess, he was passionate about athletics—a winning combination. As we introduce this bill to highlight the importance of this profession, I thought it was appropriate to recognize Dr. Hopps, and thank my colleagues for this opportunity.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN)

S. 2464. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 2465. A bill to amend the Controlled Substances Act with respect to the seizure of shipments of controlled substances, and for other purposes; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the U.S., authorizing states to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to customers referred to on-line doctors for a prescription.

Americans are increasingly turning to the Internet for access to affordable drugs. In 2003, consumer spending on drugs procured over the Internet exceeded $3.2 billion. Unfortunately, rogue Internet sites have proliferated and rake in millions of dollars by selling unproven, counterfeit, defective or otherwise inappropriate medications to unsuspecting consumers. Even more dangerously, these sites are profiting by selling addictive and potentially deadly controlled substances to consumers without a prescription or any physician oversight. This must stop before more individuals die or become addicted to easily obtainable narcotic drugs.

The first bill I am introducing was developed in close consultation with Senator FEINSTEIN, who is an original cosponsor. In appreciation for her role in helping write this legislation it is named after a young man from her state who died from an overdose of drugs purchased over the Internet.

17-year old Ryan Haight of La Mesa, CA was an honor roll student, and avid baseball card collector about to enter college. As his mom says, ''he was a good kid.'' But in May of 2000 Ryan started hanging out with a different crowd of friends. He joined an online chat forum, which advocates the safe use of drugs, and he began buying prescription drugs from the Internet.

He used the family computer late at night and a debit card his parents gave him to buy baseball cards on Ebay. You might ask, how did a healthy 17-year old obtain prescriptions for painkillers without a medical exam. He got them from Dr. Robert Ogle an ''online'' physician based out of Texas. With the prescriptions from Dr. Ogle, Ryan was able to order hydrocodone, morphine, Valium and Oxazepam and have them shipped via US mail right to his front door.

In February 2001, Ryan overdosed on a combination of these prescription drugs. His mother found him dead on his bedroom floor.

The Ryan Haight Internet Pharmacy Consumer Protection Act counters the growing sale of prescription drugs over the Internet without a valid prescription by 1. providing new disclosure standards for Internet pharmacies; 2. barring Internet sites from selling or dispensing prescription drugs to consumers who are provided a prescription solely on the basis of an online questionnaire; and 3. allowing State Attorneys General to go to Federal court to shut down rogue sites.

The bill is geared to counter domestic Internet pharmacies that sell drugs without a valid prescription, not international pharmacies that sell drugs at a low cost to individuals who have a valid prescription from their U.S. doctors.

Under current law, purchasing drugs online without a valid prescription can be simple: a consumer just types the name of the drug into a search engine, quickly identifies a site selling the medication, fills in a brief questionnaire, and then clicks to purchase. The risks of self-medicating, however, can include potential adverse reactions from inappropriately prescribed medications, dangerous drug interactions, use of counterfeit or tainted products, and addiction to habit-forming substances. Several of these illegitimate sites fail to provide information about contraindications, potential adverse effects, and efficacy.

Regulating these Internet pharmacies is difficult for Federal and State authorities. State medical and pharmacy boards have expressed the concern that they do not have adequate enforcement tools to regulate practice over the Internet. It can be virtually impossible for States to identify, investigate, and prosecute these illegal pharmacies because the consumer, prescriber, and seller of a drug may be located in different States.

The Internet Pharmacy Consumer Protection Act amends the Federal Food, Drug, and Cosmetic Act to address this problem in three steps. First, it requires Internet pharmacy websites to display information identifying the business, pharmacist, and physician associated with the website.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.

Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a state attorney general to shut down a rogue site across the country, rather than only bar sales to consumers of his or her state.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. The Act is dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The faculty named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October of 1999, Todd's family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 3,000 boxes from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer's FDA/Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances are imported through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were being imported on a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seizes shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine laced products, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, filling out duplicative forms, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of inspectors to screen incoming drug packages. In fact, currently at JFK, there are 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, and lack of manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I am working with Senator GREGG to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

Mrs. FEINSTEIN. Mr. President, I rise today along with my colleague Senator COLEMAN to introduce the Internet Pharmacy Consumer Protection Act also called the ''Ryan Haight Act'', a bill which is vital to protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug diversion and abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescription drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps to ensure safety and to assist regulatory authorities in shutting down ''rogue'' Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic website to sell prescription drugs legally, the website would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the website.

In addition, if a person wants to use the Internet to purchase their prescription drugs he or she will not be prohibited from doing so under this bill but, in order to do so, must already have a prescription for the drug that is valid in the United States prior to making the Internet purchase.

Reliance on the Internet for public health purposes and the expansion of telemedicine, particularly in rural areas, make it essential that there be at the very least a minimum standard for what qualifies as an acceptable medical relationship between patients and their physicians.

According to the American Medical Association, a health care practitioner who offers a prescription for a patient he or she has never seen before, based solely on an online questionnaire, generally does not meet the appropriate medical standard of care.

Let me illustrate the situation facing our country today. If a physician's office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can and do, it would look something like this: A physician opens a physical office, asks a patient to fill out a medical history questionnaire in the lobby and give his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patients' height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient's questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes it to the physician, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs every day all across the United States. The National Association of Boards of Pharmacy estimates

that there are around 500 identifiable rogue pharmacy websites operating on the Internet.

According to the Federation of State Medical Boards, approximately 29 states and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice. Of the other 21 States, 13 have medical or osteopathic medical boards that have taken disciplinary action against a physician for prescribing medication online.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say:

No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .

I believe California's law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down an Internet site operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who have valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, CA in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his home on February 12, 2001. His parents found a bottle of Vicodin in his room with a label from an out-of-state pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents' consent, Ryan had been obtaining controlled substances, some from an Internet site in Oklahoma. It only took a few months before Ryan's life was ended by an overdose on a cocktail of painkillers.

Ryan's story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager's computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, oftentimes cost-saving drugs.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and state medical and pharmacy boards can ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State Attorneys General the authority they need to shut down rogue Internet pharmacies operating in other States. I urge my colleagues to support this bill.

By Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. COLEMAN, Mr. CRAPO, Mr. DEWINE, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. MILLER, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. CHAMBLISS, and Mr. INHOFE):

S. 2466. A bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; to the Committee on Health, Education, Labor, and Pensions.

Mr. BROWNBACK. Mr. President, I rise today to introduce the bipartisan Unborn Child Pain Awareness Act, and I am joined by 22 original cosponsors.

Unborn children can experience pain, and they can certainly respond to touch from outside the womb. Any woman who has been blessed with carrying a baby in the second trimester can tell you this.

I remember my own children kicking and squirming inside of my wife's womb. And my wife certainly remembers feeling their kicks. That unborn child is very much alive. All along, women have been able to feel the child inside of them, but now, science is telling us what the child inside of his or her mother can feel.

Many among us are unaware of the scientific, medical fact that unborn children can feel, but it is true. Not only can they feel, but their ability to experience pain is heightened. The highest density of pain receptors per square inch of skin in human development occurs in utero from 20 to 30 weeks gestation.

An expert report on fetal development, prepared for the Partial Birth Abortion Ban trials, notes that while unborn children are obviously incapable of verbal expressions, we know that they can experience pain based upon anatomical, functional, physiological and behavioral indicators that are correlated with pain in children and adults.

Unborn children can experience pain. This is why unborn children are often administered anesthesia during in utero surgeries.

Think about the pain that unborn children can experience, and then think about the more gruesome abortion procedures. Of course, we have heard about Partial Birth Abortion, but also consider the D&E abortion. During this procedure, commonly performed after 20-weeks—when there is medical evidence that the child can experience severe pain—the child is torn apart limb from limb. Think about how that must feel to a young human.

We would never allow a dog to be treated this way. Yet, the creature we are talking about is a young, unborn child.

Fortunately, the issue of pain experienced by unborn children has been covered by the news media during the ongoing Partial Birth Abortion Ban trials. Take for instance an April 7, 2004 Associated Press news article covering the trials. And I quote: ''A type of abortion banned under a new federal law would cause 'severe and excruciating' pain to 20-week-old fetuses, a medical expert testified yesterday . . . 'I believe the fetus is conscious,' said Dr. Kanwaljeet 'Sonny' Anand, a pediatrician at the University of Arkansas for Medical Sciences . . . said yesterday that fetuses show increased heart rate, blood flow, and hormone levels in response to pain. 'The physiological responses have been very clearly studied,' he said. 'The fetus cannot talk . . . so this is the best evidence we can get.''

Today I introduce a bill that would require those who perform abortions on unborn children 20 weeks after fertilization to inform the woman seeking an abortion of the medical evidence that the unborn child feels pain: (a.) Through a verbal statement given by the abortion provider, and also (b.) by providing a brochure—developed by the Department of Health and Human Services—that goes into more detail than the verbal statement on the medical evidence of pain experienced by an unborn child 20 weeks after fertilization.

The bill would also ensure that the woman, if she chooses to continue with

the abortion procedure after being given the medical information, has the option of choosing anesthesia for the child, so that the unborn child's pain is less severe.

Women should not be kept in the dark; women have the right to know what their unborn child experiences during an abortion. After being presented with the medical and scientific information on the development of the unborn child 20 weeks after fertilization, the woman is more aware of the pain experienced by the child during an abortion procedure, and able—at the very least—to make an informed decision. It is simply not fair to keep women in the dark.

Unborn children do not have a voice, but they are young members of the human family. It is time to look at the unborn child, and recognize that it is really a young human, who can feel pain and should be treated with care.

I urge my colleagues to support and pass this important piece of legislation.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. STEVENS, Mr. VOINOVICH, Mr. SUNUNU, Mr. LIEBERMAN, Mr. AKAKA, and Mr. DURBIN):

S. 2468. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today with my friend and colleague, Senator CARPER, to introduce the Postal Accountability and Enhancement Act of 2004, a bill designed to help the 225-year-old Postal Service meet the challenges of the 21st Century. This legislation represents the culmination of a process that began in the summer of 2002 when I introduced a bill to establish a Presidential Commission charged with examining the problems the Postal Service faces, and developing specific recommendations and legislative proposals that Congress and the Postal Service could implement.

It has long been acknowledged that the financial and operational problems confronting the Postal Service are serious. At present, the Postal Service has more than $90 billion in unfunded liabilities and obligations, which include $6.5 billion in debt to the U.S. Treasury, nearly $7 billion for Workers' Compensation claims, $5 billion for retirement costs, and as much as $45 billion to cover retiree health care costs. The General Accounting Office's Comptroller General, David Walker, has pointed to the urgent need for ''fundamental reforms to minimize the risk of a significant taxpayer bailout or dramatic postal rate increases.'' The Postal Service has been on GAO's ''High-Risk'' List since April of 2001. The Postal Service is at risk of a ''death spiral'' of decreasing volume and increasing rates that lead to further decreases in volume.

In December of 2003, President Bush announced the creation of a bipartisan commission charged with identifying the operational, structural, and financial challenges facing the U.S. Postal Service. The President charged this commission with examining all significant aspects of the Postal Service with the goal of recommending legislative and administrative reforms to ensure its long-term viability.

The President's Commission conducted seven public hearings across the country at which they heard from numerous witnesses. On July 31, 2003, the Commission released its final report, making 35 legislative and administrative recommendations for the reform of the Postal Service.

As I read through the Commission's report, I was struck by what I considered the Commission's wake up call to Congress: its statement that ''an incremental approach to Postal Service reform will yield too little, too late given the enterprise's bleak fiscal outlook, the depth of current debt and unfunded obligations, the downward trend in First-Class mail volumes and the limited potential of its legacy postal network that was built for a bygone era.'' That is a very strong statement, and one that challenged both the Postal Service and Congress to embrace far-reaching reforms.

To the relief of many, including myself, the Commission did not recommend privatization of the Postal Service. Instead, the Commission sought to find a way for the Postal Service to do, as Co-Chair Jim Johnson described to me, ''an overwhelmingly better job under the same general structure.''

The Postal Service plays a vital role in our economy. The Service itself employs more than 750,000 career employees. Less well known is the fact that it is also the linchpin of a $900-billion mailing industry that employs 9 million Americans in fields as diverse as direct mailing, printing, catalog production, paper manufacturing, and financial services. The health of the Postal Service is essential to the vitality of thousands of companies and the millions that they employ.

One of the greatest challenges for the Postal Service is the decrease in mail volume as business communications, bills and payments move more and more to the Internet. The Postal Service has experienced declining volumes of First-Class mail for the past four years. This is highly significant, given that First-Class mail accounts for 48 percent of total mail volume, and the revenue it generates pays for more than two-thirds of the Postal Service's institutional costs.

The Postal Service also faces the difficult task of trying to cut costs from its nationwide infrastructure and transportation network. These costs are difficult to cut. Even though volumes may be decreasing, carriers must still deliver six days a week to more than 139 million addresses.

As Chairman of the Committee on Governmental Affairs, I held a series of eight hearings, including a joint hearing with the House, during which we reviewed the recommendations of the President's Commission. The bill Senator CARPER and I introduce today is the culmination of everything the Committee learned from dozens of witnesses over the past eight months.

First and foremost, the Collins-Carper bill preserves the basic features of universal service-affordable rates, frequent delivery, and convenient community access to retail postal services. As a Senator representing a large, rural State, I want to ensure that my constituents living in the northern woods, or on the islands, or in our many rural small towns have the same access to postal services as the people of our cities. If the Postal Service were no longer to provide universal service and deliver mail to every customer, the affordable communication link upon which many Americans rely would be jeopardized. Most commercial enterprises would find it uneconomical, if not impossible, to deliver mail and packages to rural Americans at rates charged by the Postal Service.

The Collins-Carper bill allows the Postal Service to maintain its current mail monopoly, and retain its sole access to customer mailboxes. It grants the Postal Service Board of Governors the authority to set rates for competitive products like Express Mail and Parcel Post, as long as these prices do not result in cross subsidy from market-dominant products. As a safeguard, our bill establishes a 30 day prior review period during which the proposed rate changes shall be reviewed by the Postal Regulatory Commission.

It replaces the current lengthy and litigious rate-setting process with a rate cap-based structure for market-dominant products such as First-Class Mail, periodicals and library mail. This would allow the Postal Service to react more quickly to changes in the mailing industry. The rate caps would be linked to an inflation indicator selected by the Postal Regulatory Commission. The goal would be to make rate increases more predictable and less frequent and to provide incentives for the Postal Service to operate efficiently. Price changes for market-dominant products would be subject to a 45-day prior review period by the Postal Regulatory Commission.

Our bill would introduce new safeguards against unfair competition by the Postal Service in competitive markets. Subsidization of competitive products by market-dominant products would be expressly forbidden, and an equitable allocation of institutional costs to competitive products would be required.

The President's Commission recommended that the regulator be granted the authority to make changes to the Postal Service's universal service obligation and monopoly. The vast majority of the postal community, however, shared my belief that these are important policy determinations that should be retained by Congress. The

Collins-Carper bill keeps those public policy decisions in congressional hands.

The existing Postal Rate Commission would be transformed into the Postal Regulatory Commission with greatly enhanced authority. Under current law, the Rate Commission has very narrow authority. We wanted to ensure that the Postal Service management has both greater latitude and stronger oversight. Among other things, the Postal Regulatory Commission will have the authority to regulate rates for non-competitive products and services; ensure financial transparency; establish limits on the accumulation of retained earnings by the Postal Service; obtain information from the Postal Service, if need be, through the use of new subpoena power; and review and act on complaints filed by those who believe the Postal Service has exceeded its authority. Members of the Postal Regulatory Board will be selected solely on the basis of their demonstrated experience and professional standing. Senate confirmation of all Board Members will be required.

The Governmental Affairs Committee dedicated two hearings to the examination of the Commission's workforce-related recommendations. The Postal Service is a highly labor intensive organization, using $3 out of every $4 to pay the wages and benefits of its employees. Their workforce is comprised of more than 700,000 dedicated letter carriers, clerks, mail handlers, postmasters, and others, who place great value on their right to collectively bargain. Our bill reaffirms that right. This bill only makes changes to the bargaining process that have been agreed to by both the Postal Service and the four major unions. We replace the rarely used fact-finding process with mediation, and shorten statutory deadlines for certain phases of the bargaining process.

Additionally, the Collins-Carper bill corrects what I believe to be an anomaly in the Federal workers' compensation law that results in high costs for the Postal Service. Under the Federal Employees Compensation Act (FECA), Federal employees with dependents are eligible for 75 percent of their take-home pay, tax free, plus cost of living allowances. In addition, there is no maximum dollar cap on FECA payments. As a result, employees often opt not to retire, staying on the more generous workers' compensation program permanently.

According to a March 2003 audit issued by the Postal Service's Office of Inspector General, the Postal Service's workers' compensation rolls include 81 cases that originated 40 to 50 years ago, with the oldest recipient being 102 years old. The IG's office found 778 cases that originated 30 to 40 years ago; and 1,189 cases that originated 20 to 29 years ago.

The Collins-Carper bill works to protect the financial resources of the Postal Service by converting workers' compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches 65 years of age. This change would reflect the fact that disabled postal employees would likely retire at some point were they not receiving workers' compensation. I would like to note that the average postal employee retires far earlier than age 65, so this is still a generous program. It is important to point out that the Postal Service has reduced their workplace injury rate by twenty-eight percent over the past three years.

The Collins—Carper bill also puts into place a three-day waiting period before an employee is eligible to receive 45 days of continuation of pay. This is consistent with every state's workers' compensation program that requires a three- to seven-day waiting period before benefits are paid.

Our bill has reached an important compromise on the issue of workshare discounts. Some have raised concerns that the Postal Service has set rates so that mailers get a discount greater than the cost avoided by the Postal Service. While this may have occurred in a handful of instances, those mailers are still covering their attributable costs, as well as making a healthy contribution to overhead. The language in our bill sets a policy that the Postal Service shall not create new discounts greater than the cost avoided by the Postal Service. The only exception is in those cases where the Postal Regulatory Commission believes those rates are necessary.

The bill has also, for the first time, explicitly created the authority for the Postal Service to enter into negotiated service agreements with individual customers. This will allow the Postal Service to create agreements with customers to increase its revenue. I would point out that these agreements must cover all attributable costs, and will likely result in greater contribution to overhead. In addition, our bill requires that other similarly situated mailers will be able to enter into such agreements with the Postal Service.

Finally, our bill would repeal a provision of Public Law 108–18 which requires that money owed to the Postal Service due to an overpayment into the Civil Service Retirement System Fund be held in an escrow account. Repealing this provision would essentially ''free up'' $78 billion over a period of 60 years. These savings would be used to not only pay off debt to the U.S. Treasury and to fund health care liabilities, but to mitigate rate increases as well. In fact, failure to release these escrow funds would mean, for mailers, a double-digit rate increase in 2006—an expense most American businesses and many consumers are ill-equipped to afford.

The bill would also return to the Department of Treasury the responsibility for funding CSRS pension benefits relating to the military service of postal retirees. No other agency is required to make this payment. Ratepayers should not be held responsible for this $27 billion obligation.

The Postal Service has reached a critical juncture. If we are to save and strengthen this vital service upon which so many Americans rely for communication and their livelihoods, the time to act is now.

Our bill has the strong endorsements of the National Rural Letter Carriers Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Coalition for a 21st Century Postal Service—which represents thousands of the major mailers, employee groups, small businesses, and other users of the mail. I am also very pleased to add Senators TED STEVENS, GEORGE VOINOVICH and JOHN SUNUNU as originated cosponsors of this bill.

I look forward to working with all of my colleagues in the Senate, and House Government Reform and Oversight Committee Chairman Tom Davis, who just last week passed a postal reform bill out of his committee by a vote of 40–0.

I ask unanimous consent that the text of the bill be printed in the RECORD, along with a letter sent to me from David Walker, Comptroller General of the General Accounting Office, addressing the need for comprehensive postal reform.

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

S. 2468

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 ''Postal Accountability and Enhancement Act''.

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

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate is applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621, 3622, and 3623 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters;
''(2) first-class mail cards;
''(3) periodicals;
''(4) standard mail;
''(5) single-piece parcel post;
''(6) media mail;
''(7) bound printed matter;
''(8) library mail;
''(9) special services; and
''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(3) the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

''(12) the policies of this title as well as such other factors as the Commission deems appropriate.

''(d) REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—

''(1) require the Postal Rate Commission to set annual limitations on the percentage changes in rates based on inflation using indices, such as the Consumer Price Index, the Employment Cost Index, the Gross Domestic Product Price Index, or any similar measure as the Postal Rate Commission may prescribe;

''(2) establish a schedule whereby rates, when necessary and appropriate, would increase at regular intervals by predictable amounts;

''(3) not later than 45 days before the implementation of any adjustment in rates under this section—

''(A) require the Postal Service to provide public notice of the adjustment;

''(B) provide an opportunity for review by the Postal Rate Commission;

''(C) provide for the Postal Rate Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under paragraph (1); and

''(D) require the Postal Service to respond to the notice provided under subparagraph (C) and describe the actions to be taken to comply with the limitation under paragraph (1).

''(4) notwithstanding any limitation set under paragraphs (1) and (3), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service or with a change to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to institutional costs of the Postal Service from the mail matter subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time;

''(D) the workshare discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, or scientific value; or

''(E) the Postal Regulatory Commission determines that such discounts are reasonable and equitable and consistent with the objectives and factors taken into account under subsections (b) and (c).

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report and explanation of the Postal Service's reasons for establishing or maintaining the rate, setting forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate.

''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

''§ 3623. Service agreements for market-dominant products

''(a) IN GENERAL.—

''(1) AUTHORITY.—The Postal Service may enter into service agreements with a customer or group of customers that provide for the provision of postal services under terms, conditions, or service standards that differ from those that would apply under the otherwise applicable classification of market-dominant mail.

''(2) AGREEMENTS.—An agreement under this section may involve—

''(A) performance by the contracting mail user of mail preparation, processing, transportation, or other functions;

''(B) performance by the Postal Service of additional mail preparation, processing, transportation, or other functions; or

''(C) other terms and conditions that meet the requirements of subsections (b) and (c).

''(b) REQUIREMENTS.—A service agreement under this section may be entered into only if each of the following conditions is met:

''(1) The total revenue generated under the agreement—

''(A) will cover all Postal Service costs attributable to the postal services covered by the agreement; and

''(B) will result in no less contribution to the institutional costs of the Postal Service than would have been generated had the agreement not been entered into.

''(2) Rates or fees for other mailers will not increase as a result of the agreement.

''(3) The agreement pertains exclusively to products in the market-dominant category of mail.

''(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same terms or conditions, and the Postal Service remains willing and able to enter into such.

''(c) LIMITATIONS.—A service agreement under this section shall—

''(1) be for a term not to exceed 3 years; and

''(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

''(d) NOTICE REQUIREMENTS.—

''(1) IN GENERAL.—At least 30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following information with respect to such agreement:

''(A) A description of the postal services the agreement involves.

''(B) A description of the functions the customer is to perform under the agreement.

''(C) A description of the functions the Postal Service is to perform under the agreement.

''(D) The rates and fees payable by the customer during the term of the agreement.

''(E) With respect to each condition under subsection (b), information sufficient to demonstrate the bases for the view of the Postal Service that such condition would be met.

''(2) AGREEMENTS LESS THAN NATIONAL IN SCOPE.—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any amendment to that agreement) pertains.

''(e) EQUAL TREATMENT REQUIRED.—If the Postal Service enters into a service agreement with a mailer under this section, the Postal Service shall make such agreement available to similarly situated mailers on functionally equivalent terms and conditions consistent with the regulatory system established under section 3622 without unreasonable distinctions based on mailer profiles, provided that such distinctions, if ignored, would not render any subsequent agreement uneconomic or impractical.

''(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not in conformance with the requirements of this section, or who is aggrieved by a decision of the Postal Service not to enter into an agreement under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

''(g) POSTAL REGULATORY COMMISSION ROLE.—

''(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

''(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section.

''(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of subsection (b)(1)(B) shall be based, to the extent practicable, on the actual contribution of the mail involved, not on the average contribution made by the mail classification most similar to the services performed under the agreement. If mailer-specific data is not available, the bases for the determination used shall be provided and shall include a discussion of the suitability of the data used, in accordance with regulations established by the Postal Regulatory Commission.''.

(b) REPEALED SECTIONS.—Sections 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Rate Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of the enactment of this section.

''§ 3633. Provisions applicable to rates for competitive products

''The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

''(1) prohibit the subsidization of competitive products by market-dominant products;

''(2) ensure that each competitive product covers its costs attributable; and

''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3) (relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1) through (3) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Interested persons (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service

take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance and preserve the value of postal services to both senders and recipients.

''(2) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(3) To guarantee Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(c) FACTORS.—In establishing or revising such standards, the Postal Regulatory Commission shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) mail volume and revenues projected for future years;

''(4) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(5) the current and projected future cost of serving Postal Service customers;

''(6) the effect of changes in technology, demographics and population distribution on the efficient and reliable operation of the postal delivery system; and

''(7) the policies of this title as well as such other factors as the Commission determines appropriate.''.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENT.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals; and

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals.

(c) POSTAL FACILITIES.—The Postal Service plan shall include a description of its long-term vision for rationalizing its infrastructure and workforce and how it intends to implement that vision, including—

(1) a strategy for how it intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(2) an update on how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, and other areas will impact network rationalization plans;

(3) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(4) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes; and

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under this section to Congress, the Postal Service shall submit the plan to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan—

(A) is consistent with the continuing obligations of the Postal Service under title 39, United States Code; and

(B) provides for the Postal Service to meet the service standards established under section 3691.

(3) SUBMISSION OF REPORT.—The Postal Service shall submit the report of the Inspector General under this subsection with the plan submitted to Congress under subsection (a).

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

"§ 2011. Provisions relating to competitive products

''(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(1) costs attributable to competitive products; and

''(2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

For purposes of this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by the Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may invest such amounts as it considers appropriate in accordance with regulations which the Secretary of the Treasury shall prescribe within 12 months after the date of enactment of the Postal Accountability and Enhancement Act.

''(d) The Postal Service may, in its sole discretion, provide that moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

''(e)(1) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as the Postal Service determines necessary or desirable.

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) may not be purchased by the Secretary of the Treasury;

''(B) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority;

''(C) shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state; and

''(D) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as specifically provided by reference to this subparagraph in a law enacted after this subparagraph takes effect), shall not be eligible for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(4)(A) This paragraph applies with respect to the period beginning on the date of the enactment of this paragraph and ending at the close of the 5-year period which begins on the date on which the Postal Service makes its submission under subsection (h)(1).

''(B) During the period described in subparagraph (A), nothing in subparagraph (A) or (D) of paragraph (3) or the last sentence of section 2006(b) shall, with respect to any obligations sought to be issued by the Postal Service under this subsection, be considered to affect such obligations' eligibility for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(C) The Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the Bank and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the rating then most recently obtained by the Postal Service under subparagraph (D), as determined by the Bank.

''(D) In order to be eligible to borrow under this paragraph, the Postal Service shall first obtain a credit rating from a nationally recognized credit rating organization. Such rating—

''(i) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service's assumed taxable income from competitive products); and

''(ii) may, before final rules of the Postal Regulatory Commission under subsection (h) are issued (or deemed to have been issued), be based on the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

''(h)(1) The Postal Service, in consultation with an independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

''(A) the accounting practices and principles that should be followed by the Postal Service with the objectives of identifying the capital and operating costs incurred by the Postal Service in providing competitive products, and preventing the cross-subsidization of such products by market-dominant products; and

''(B) the substantive and procedural rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations shall be submitted to the Postal Regulatory Commission no later than 12 months after the effective date of this section.

''(2)(A) Upon receiving the recommendations of the Postal Service under paragraph (1), the Commission shall give interested parties, including the Postal Service, enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1)(B); and

''(iii) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

Final rules under this subparagraph shall be issued not later than 12 months after the date on which the Postal Service makes its submission to the Commission under paragraph (1) (or by such later date as the Commission and the Postal Service may agree to). If final rules are not issued by the Commission by the deadline under the preceding sentence, the recommendations submitted by the Postal Service under paragraph (1) shall be treated as the final rules. The Commission is authorized to promulgate regulations revising such rules.

''(C) Reports described in subparagraph (B)(iii) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires. The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

''(i) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described in subparagraph (B)(iii) shall also be transmitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (b), by adding at the end the following: ''Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005.''; and

(B) in subsection (c), by inserting ''under section 2005'' before ''shall be obligations''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not:

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered under the antitrust laws (as so defined) from the Postal Service or any officer or employee thereof acting in an official capacity for any conduct with respect to a product in the market-dominant category of mail.

''(3) This subsection shall not apply with respect to conduct occurring before the date of the enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes.

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of the enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of the enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) 5-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 3 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that purport to permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of

title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 1207. Labor disputes

''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days of such notice, if no agreement has been reached by that time.

''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days of the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days of the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602; and

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)).

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of the enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f),

or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL SERVICE.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of the enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 30, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—Chapter 89 of title 5, United States Code, is amended—

(1) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(2) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than December 31, 2006, and by December 31 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by January 31, 2046, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than January 31, 2007, and by January 31 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the

first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability. A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117;''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

UNITED STATES GENERAL ACCOUNTING OFFICE,
Washington, DC, February 6, 2004.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Governmental Affairs, United States Senate.

Need for Comprehensive Postal Reform

DEAR CHAIRMAN COLLINS: This letter responds to your request for our views on the need for postal reform and is based upon our prior testimonies related to this issue. In summary, we believe that comprehensive postal reform is urgently needed. The ability of the Service to remain financially viable is at risk because its current business model—which relies on mail volume growth to cover the costs of its expanding delivery network—is not well aligned with 21st century realities. Since we placed the Postal Service's transformation efforts and financial outlook on our High-Risk List in April 2001, I have testified on several occasions about the governance, financial, operational, and human capital challenges that threaten the Service's ability to carry out its mission. If not effectively addressed in a timely manner, these challenges serve to threaten the Service's ability to remain self-supporting while providing affordable, high-quality and universal postal services to all Americans.

The following key trends serve to reinforce our view that enactment of postal reform legislation is needed:

Declining mail volume: Total mail volume declined in fiscal year 2003 for the third year in a row—a historical first for the Service, which has depended on rising mail volume to help cover rising costs and mitigate rate increases. First-Class Mail volume declined by a record 3.2 percent in fiscal year 2003 and is projected to decline annually for the foreseeable future. Some of this decline is due to technology advances (e.g. E-mail, digital phones, faxes, and electronic bill payments) that are likely to increase in the future. This trend is particularly significant because First-Class Mail covers more than two-thirds of the Service's institutional costs.

Changes in the mail mix: The Service's mail mix is changing with declining volume for high-margin products, such as First-Class Mail, and increasing volume of lower-margin products, such as some types of Standard Mail. These changes reduce revenues available to cover the Service's institutional costs.

Increased competition from private delivery companies: Private delivery companies dominate the market for parcels greater than 2 pounds and appear to be making inroads into the market for small parcels. Priority Mail volume fell 13.9 percent in fiscal year 2003 and over the last 3 years has declined nearly 30 percent. Once a highly profitable growth product for the Service, Priority Mail volume is declining as the highly competitive parcel market turns to lower-priced ground shipment alternatives. Express Mail volume is declining for the same reason. In addition, United Parcel Service (UPS) and FedEx have established national retail networks through UPS's acquisition of MailBoxes Etc., now called UPS Stores, and FedEx's recent acquisition of Kinko's.

Subpar revenue growth: The Service's revenues are budgeted for zero growth in fiscal year 2004, which would be the first year since postal reorganization that postal revenues have failed to increase. However, as the Service has recognized, even the zero-growth target will be challenging. In the absence of revenue growth generated by increasing volume, the Service must rely more heavily on rate increases to cover rising costs and help finance capital investment needs.

Declining capital investment: The Service's capital cash outlays declined from $3.3 billion in fiscal year 2000 to $1.3 billion in fiscal year 2003, which was the lowest level since fiscal year 1986, and far below the level of the late 1990s, when the Service spent more than $3 billion annually. Capital cash outlays are budgeted to increase to $2.4 billion in fiscal year 2004, but this level may not be sufficient to enable the Service to fully fund its capital investment needs. In the longer term, it is unclear what the Service's needs will be to maintain and modernize its physical infrastructure, as well as how these needs will be funded.

Renewed difficulties in substantially improving postal productivity: The Service's productivity increased by 1.8 percent in fiscal year 2003 but is estimated to increase by only 0.4 percent in fiscal year 2004. In the absence of mail volume growth, substantial productivity increases will be required to help cover cost increases generated by rising wages and benefit costs and to mitigate rate increases.

Significant financial liabilities and obligations: Despite the passage of legislation that reduced the Service's pension obligations, the Service has about $88 billion to $98 billion in liabilities and obligations that include $47 billion to $57 billion in unfunded retiree health benefits. Under the current pay-as-you-go system, the Service may have difficulty financing its retiree health benefits obligation in the future if mail volume trends continue to impact revenues while costs in this area continue to rise. The Service has recently proposed two options to Congress, so the Service could prefund this obligation to the extent that it is financially able.

Uncertain funding for emergency preparedness: The Service requested $350 million for emergency preparedness for fiscal year 2004, which it did not receive, and $779 million for fiscal year 2005. If the money is not appropriated, funding for this purpose may have to be built into postal rates.

Challenges to achieve sufficient cost cutting: The Service achieved additional cost cutting to compensate for below-budget revenues in fiscal year 2003. Despite this progress, in the longer term it is unclear whether continued cost-cutting efforts can offset declines in First-Class Mail volume without impacting the quality of service.

Although we have discussed numerous actions that the Postal Service can take within its existing authority to improve its overall efficiency and effectiveness, we do not believe that incremental steps toward postal transformation can resolve the fundamental and systemic issues associated with the Service's current business model. To avoid the risk of a significant taxpayer bailout or dramatic postal rate increases, we believe that Congress should enact comprehensive postal reform legislation that includes the Service's overall statutory framework, resolution of issues regarding the Service's pension and retiree health benefits obligations, and whether there is a continued need for an escrow account.

The key areas of the Service's statutory framework that need to be addressed include:

Clarifying the Service's mission and role by defining the scope of universal service and the postal monopoly and by clarifying the role of the Service in regard to competition and its regulatory functions.

Enhancing governance, transparency, and accountability by delineating public policy, operational, and regulatory responsibilities; by ensuring managerial accountability through a strong, well-qualified corporate-style board that holds its officers responsible and accountable for achieving real results; and by defining appropriate reporting mechanisms to enhance the Service's transparency and accountability for financial and performance results.

Improving flexibilities and oversight by balancing increased flexibility for the Service—through streamlining the rate-setting process and allowing a certain amount of retained earnings—with appropriate oversight by a independent regulatory body to protect postal customers against undue discrimination, to restrict cross-subsidies, and to ensure due process. In addition, the Service

needs additional flexibility to rationalize its infrastructure and reshape its workforce. Any such additional flexibility should be accompanied by appropriate safeguards to prevent abuse along with enhanced transparency and accountability mechanisms.

Making needed human capital reforms such as (1) determining the Service's responsibility for pension costs related to military service, funding retiree health benefits, and determining what action to take on the escrow account established in recent pension legislation; (2) deciding whether postal workers' compensation benefits should be on par with those in the private sector; and (3) clarifying pay comparability standards.

We believe that Congress now has a rare opportunity to assure the Service's long-term financial viability through comprehensive postal reform legislation that addresses the Service's key structural and systemic deficiencies, its unfunded obligations, including its retiree health benefits obligation, and the escrow requirement. Key legislative and administrative actions in connection with transforming the Postal Service can also serve as positive examples for other key government transformation efforts.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time, we will provide copies to interested congressional committees. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

For additional information about this report, please contact Mark L. Goldstein, Director, Physical Infrastructure Issues at (202) 512–2834 or at goldsteinm@gao.gov. Please contact me if I can be of any further assistance to help make comprehensive postal reform a reality.

Sincerely yours,

DAVID M. WALKER,
Comptroller General of the United States.

Mr. CARPER. Mr. President, I rise today to join Senator COLLINS in introducing the Postal Accountability and Enhancement Act of 2004, legislation that makes the reforms necessary for the Postal Service to thrive in the 21st Century and to better serve the American people.

This bill is based in part on S. 1285, the comprehensive postal reform legislation I introduced nearly a year ago. S. 1285 was itself based on ten years of work on postal reform in the House of Representatives, led by Congressman, JOHN MCHUGH from New York. It is also inspired by the work of the postal commission formed by President Bush last year, called the President's Commission on the United States Postal Service, which studied all aspects of the Postal Service and made recommendations on how it could be modernized.

When I rose to introduce S. 1285 last June, the House Government Reform Committee had only recently failed to report out the latest version of the McHugh reform bill and the President's Commission was only weeks away from issuing its final recommendations. Along with a number of other observers, I feared that the McHugh bill's fate might have spelled the end of postal reform for some time. I also feared that the Commission's recommendations would focus on some of the more extreme reform proposals floated in the past, such as postal privatization. While the Commission did make a handful of recommendations that I believe go too far, I was pleased to see that its work largely mirrored the provisions in S. 1285 and the various House reform bills we have seen in recent years.

I'd like to begin, then, by thanking Congressman MCHUGH and his colleagues on the House Government Reform Committee for its visionary leadership on postal reform over the years. I'd also like to thank the members of the President's Commission, especially co-chairs James A. Johnson and Harry J. Pearce, for their service. Postal reform is a difficult issue. It is also a vitally important issue for every American who depends on the Postal Service every day. Their willingness to listen to all sides of the debate and to craft what is, for the most part, a set of balanced reform recommendations is admired and appreciated. The work they have done has brought to light a number of the key issues facing the Postal Service and has made it possible to get a bipartisan postal reform bill signed into law this year.

Senator COLLINS also deserves our thanks and applause for her hard work on this issue. Under her leadership, the Governmental Affairs Committee held a series of eight excellent hearings on postal reform over the past few months. She and I and our staffs have also held countless meetings with the various stakeholders for more than a year now. Everyone with an interest in the Postal Service was given an opportunity to have their say, and I think that's reflected in the balanced bill we're introducing today.

It's always a pleasure working with Senator COLLINS. We've worked together on a number of issues over the years—from welfare reform to homeland security and the future of passenger rail in our country. Her dedication to bipartisanship, and simply doing the right thing, is rare these days. It's a honor to be introducing this historic bill with her today.

Let me also express to Senator LIEBERMAN, our Committee's Ranking Member, my appreciation for giving me the opportunity as a freshman Senator to work so closely on one of the most important issues to come before Governmental Affairs. The support he and his staff have offered us throughout this process has been invaluable.

Some of our colleagues may wonder why we need postal reform. They probably receive few complaints about the service their constituents get from the Postal Service and its employees. In fact, a survey conducted by the President's Commission indicated that the American people like the Postal Service just the way it is. We must keep in mind, however, that, despite the fact that the mailing industry, and the economy as a whole, have changed radically over the years, the Postal Service has, for the most part, remained unchanged for more than three decades now.

In the early 1970s, Senator STEVENS and others led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. Service was suffering and there was little money available to expand.

By all accounts, the product of Senator STEVENS' labors, the Postal Reorganization Act signed into law by President Nixon in 1971, has been a phenomenal success. The Postal Service today receives virtually no taxpayer support and the service its hundreds of thousands of employees provide to every American, every day is second to none. More than thirty years after its birth, the Postal Service now delivers to 141 million addresses each day and is the anchor of a $900 billion per year mailing industry.

As we celebrate the Postal Service's successes, however, we need to be thinking about what needs to be done to make them just as successful in the years to come. When the Postal Service started out in 1971, no one had access to fax machines, cell phones and pagers. No one imagined that we would ever enjoy conveniences like e-mail and electronic bill payment. Most of the mail I receive from my constituents these days arrives via fax and e-mail instead of hard copy mail, a marked change from my days in the House and even from my more recent days as Governor of Delaware.

This continuing electronic diversion of mail, coupled with economic recession and terrorism, has made for some rough going at the Postal Service in recent years. In 2001, as Postmaster General Potter came onboard, the Postal Service was projecting its third consecutive year of deficits. They lost $199 million in fiscal year 2000 and $1.68 billion in fiscal year 2001. They were projecting losses of up to $4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend $4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its $15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations, further eroding mail volume.

Good things have happened since 2001, though. First, General Potter has led a commendable effort to make the Postal Service more efficient. Billions of dollars in costs and have been taken out of the system. Thousands of positions have been eliminated through attrition. Successful automation programs have yielded great benefits. Perhaps more dramatically, the Postal Service also learned that an unfunded pension liability they once believed was an high as $32 billion was actually

$5 billion. Senator COLLINS and I responded with legislation, the Postal Civil Service Retirement System Funding Reform Act, signed into law by President Bush last year, which cuts the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly $3 billion. This has freed up money for debt reduction and prevented the need for another rate increase until at least 2006.

Aggressive cost cutting and a lower pension payment, then, have put off the emergency that would have come if the Postal Service had reached its debt limit. But cost cutting can only go so far and will not solve the Postal Service's long-term challenges. These long-term challenges were laid out in stark detail earlier this year when Postmaster General Potter and Postal Board of Governors Chairman David Fineman testified before the House Government Reform Committee's Special Panel on Postal Reform. Chairman Fineman pointed out then that the total volume of mail delivered by the Postal Service has declined by more than 5 billion pieces since 2000. Over the same period, the number of homes and businesses the Postal Service delivers to have increased by more than 5 million. First Class mail, the largest contributor to the Postal Service's bottom line, is leading the decline in volume. Some of those disappearing First Class letters are being replaced by advertising mail, which earns significantly less. Many First Class letters have likely been lost for good to the fax machine, e-mail and electronic bill pay.

Despite electronic diversion, the Postal Service continues to add about 1.7 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-growing parts of the country will need new or expanded postal facilities in the coming years. As more and more customers turn to electronic forms of communication, letter carriers are bringing fewer and fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Service's current infrastructure, finance retirement obligations to its current employees, pay for new letter carriers and build facilities in growing part of the country will only further erode mail volume.

As I've mentioned, the Postal Service has been trying to improve on its own. They are making progress, but there is only so much they can do. Even if the economy begins to recover more quickly and the Postal Service begins to see volume and revenues improve, we will still need to make fundamental changes in the way the Postal Service operates in order to make them as successful in the 21st Century as they were in the 20th Century.

This is where the Postal Accountability and Enhancement Act comes in. First, our bill begins the process of developing a modern rate system for pricing Postal Service products. The new system, to be developed by a strengthened Postal Rate Commission, renamed the Postal Regulatory Commission, would allow retained earnings, provide the Postal Service significantly more flexibility in setting prices and streamline today's burdensome ratemaking process. To provide stability, predictability and fairness for the Postal Service's customers, rates would remain within an inflation-based cap to be developed by the Commission.

In addition, the new rate system will allow the Postal Service to negotiate service agreements with individual mailers. The Postal Rate Commission in recent years did approve a service agreement the Postal Service negotiated with Capital One, but the process for considering the agreement took almost a year and the Postal Service's authority to enter into such agreements is not clearly spelled out in law. The Postal Accountability and Enhancement Act allows the Postal Service to enter into agreements if the revenue generated from them covers all costs attributable to the Postal Service and will result in no less contribution to the institutional costs of the Postal Service than would have been generated had the agreement not been entered into. No agreement would be permitted if it resulted in higher rates for any other mailer or prohibited any similarly situated mailer from negotiating a similar agreement.

The new rate system also includes some important safeguards meant to prohibit worksharing discounts that exceed costs avoided by the Postal Service. Now, worksharing on the part of mailers has been an important part of the productivity improvements at the Postal Service in recent years. Mailers should get credit in the form of a discount for work they do to their mail, such as presorting and barcoding or transporting mail deeper into the postal system. The discounts they receive, however, should have some rational relation to the benefit the Postal Service gets from the worksharing. The Postal Service should continue to be free to use discounts to incent mailers to be more efficient. They also should not be forced to impose large rate increases on workshared mail in order to comply with a strict prohibition on discounts in excess of costs avoided. Discounts in excess of costs avoided, however, should be temporary and reasonable. Our worksharing language strikes a good balance in that it prohibits the Postal Service from outsourcing work that could be performed cheaper in house while maintaining pricing flexibility.

The second major provision in the Postal Accountability and Enhancement Act requires the Postal Regulatory Commission to set strong service standards for the Postal Service's Market Dominant products, a category made up mostly of those products, like First Class mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to pursue efforts like the elimination of Saturday delivery, a proposal floated three years ago. The new standards set by the Commission will aim to improve service and will be used by the Postal Service to establish performance goals, rationalize its physical infrastructure and streamline its workforce.

In a rate system featuring rate caps, as any system established under the Postal Accountability and Enhancement Act must, I believe it is especially important that the Regulatory Commission, not the Postal Service, be charged with determining the appropriate level of service postal customers should receive. This will prevent the Postal Service form cutting service as a way to keep rates below the cap. The Postal Service should be forced to look to productivity enhancements, not poorer quality service, to find savings.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations. It also subjects the Postal Service to state zoning, planning and land use laws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these products as a whole pay their share of the Postal Service's institutional costs. The Federal Trade Commission will further study any additional legal benefits the Postal Service enjoys that its private sector competitors do not. The Regulatory Commission will then find a way to use the rate system to level the playing field.

Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by strengthening oversight. Qualifications for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Commissioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish them for violating rate and service regulations. In addition, the Commission will make an annual determination as to whether the Postal Service is in compliance with rate law and meeting service standards and will have the power to punish them for any transgressions.

Fifth, the Postal Accountability and Enhancement Act revises two provisions from the Postal Civil Service Retirement System Funding Reform Act in an effort to shore up the Postal Service's finances in the years to come. As our colleagues may be aware, that bill requires the Postal Service, beginning in 2006, to deposit any savings it enjoys by virtue of lower pension payments into an escrow account. In this bill, we eliminate that requirement in

order to allow the Postal Service to spend the money that would have gone into escrow according to the plan submitted by the Postal Service in September of last year, which called for using most of the savings to begin paying down the Postal Service's $50 billion retiree health obligation. The bill Senator COLLINS and I are introducing today also reverses the provision in the Postal Civil Service Retirement System Funding Reform Act that made the Postal Service the only Federal agency shouldered with the burden of paying the additional pension benefits owed to their employees by virtue of past military service.

Finally, and most importantly, the bill preserves universal service and the postal monopoly and forces the Postal Service to concentrate solely on what it does best—processing and delivering the mail to all Americans. Our bill limits the Postal Service, for the first time, to providing ''postal services,'' meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service ''bind the Nation together through the mail'' and serve all parts of the country, urban, suburban and rural, in a non-discriminatory fashion. Any service standards established by the Postal Regulatory Commission will continue to ensure delivery to every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

The President's Commission, while calling for the preservation of universal service and the postal monopoly, opened the door for future changes by recommending that the Regulatory Commission be given the authority to make them themselves. While I believe that Congress will find it difficult to roll back universal service or limit the postal monopoly in the future if it is deemed necessary to do so, I believe the recommendation from the President's Commission would give too much power to a relatively small, political body. In order to keep Congress focused on the Postal Service's future, however, our bill asks the Regulatory Commission to report every three years on the state of universal service and the postal monopoly. When necessary, they would also make recommendations to Congress when they feel like one is necessary.

We have a once-in-a-generation opportunity this year to enact meaningful postal reform legislation. The House Government Reform Committee marked up its version of the Postal Accountability and Enhancement Act last week by a unanimous 40–0 vote. The President has indicated his support for a bill, releasing a set of postal reform principles at the end of last year calling on Congress to make some key changes to the way the Postal Service operates. We now have everyone from the National Association of Letter Carriers to former opponents of reform like UPS supporting our efforts, as well as those in the House. I know there are still some concerns about certain provisions in our bill, but I look forward to working with Senator COLLINS and each of our colleagues in the coming weeks to continue this momentum and get a bill through Congress that can be signed into law this year.

It's amazing to me to think that the Postal Service, something Senator STEVENS was able to put together at the beginning of his career, could have lasted so long and had such an impact on every American. I'm hopeful that the model Senator COLLINS and I have set out in this bill today can last at least that long and have just as positive an impact on our nation and our economy as the Postal Service did so many years ago.

Mr. STEVENS. Mr. President, I am pleased to join Chairman COLLINS and Senator CARPER as an original cosponsor of S. 2468, the Postal Accountability and Enhancement Act. In 2002, the President formed a Commission to evaluate the operations of the United States Postal Service. Earlier this year, the President's Commission issued a comprehensive report filled with suggestions on how to improve the Postal Service. Senator COLLINS became actively engaged on the issue of postal reform and held a series of hearing this year on postal reform. This bill is the product of the postal reform hearings held before the Government Affairs Committee.

I expect I will have suggestions on this legislation as the bill moves through the legislative process. However, I support Senator COLLINS's commitment to postal reform. I look forward to working with her and Senator CARPER in Committee and on the Senate floor to ensure the success of this legislation.

Mr. AKAKA. Mr. President, I am pleased to join with Senator COLLINS and Senator CARPER, who today have introduced the Postal Accountability and Enhancement Act. I commend both of my Governmental Affairs Committee colleagues for their leadership in crafting a postal reform bill.

For some time, the General Accounting Office has warned that the long-term financial outlook for the U.S. Postal Service was at risk without significant changes. At the request of the Governmental Affairs Committee, the U.S. Postal Service developed a transformation plan that offered its vision for the future. Late in 2002, a Presidential Postal Commission was convened, which issued a number of recommendations in 2003.

Over the past 6 months, I have participated in a series of hearings chaired by Senator COLLINS which examined the recommendations of the Postal Commission. I commend Senator COLLINS for guaranteeing that the divergent views were seriously considered throughout our eight hearings. I also wish to commend my colleague from Delaware, Senator CARPER, for his strong and early commitment to postal reform.

I support modernizing the U.S. Postal Service to ensure that its mission of providing 6 days a week universal service at an affordable rate is preserved. Although the legislation introduced today responds to many of the recommendations and concerns we heard in our hearings, it wisely rejects others. However, like most bills, there are provisions that trouble me. I am particularly concerned with the sections relating to worksharing and changes to the Federal Employees' Compensation Act (FECA). I will continue to work with the bill's sponsors to address these provisions, which I believe do not promote cost savings for the Postal Service or fairness for postal workers.

I look forward to working with my colleagues on this legislation to guarantee that the U.S. Postal Service will be in position to best serve the public in the 21st century, be a model employer, and protect the retirement future of its employees.

By Mr. BOND (for himself, Mr. HARKIN, Mr. DURBIN, Mr. TALENT, Mr. GRASSLEY, Mr. COLEMAN, Mr. FITZGERALD, and Mr. PRYOR):

S. 2470. A bill to enhance navigation capacity improvements and the ecosystem restoration plan for the Upper Mississippi River and Illinois Waterway System; to the Committee on Environment and Public Works.

Mr. BOND. Mr. President, today, I join my colleagues, Senators HARKIN, DURBIN, TALENT, GRASSLEY, COLEMAN, FITZGERALD and PRYOR to introduce bipartisan legislation to provide transportation efficiency and environmental sustainability on the Mississippi and Illinois Rivers.

As the world becomes more competitive, we must also. In the heartland, the efficiency, reliability, capacity, and safety of our transportation options are critical—often make-or-break. As we look 50 years into the future, and as we anticipate and try to promote commercial and economic growth, we have to ask ourselves a fundamental question: should we have a system that permits and promotes growth, or should we be satisfied to restrict our growth to the confines of a transportation straight jacket designed not for 2050, but for 1980?

Further, we must ask ourselves if dramatic investments should be made to address environmental problems and opportunities that exist on these great waterways.

In both cases, the answer is, ''Of course we should modernize and improve.''

We have a system which is in environmental and economic decline. Jobs and markets and the availability of habitat for fish and wildlife are at stake.

We cannot be for increased trade, commercial growth, and job creation without supporting the basic transportation infrastructure necessary to move goods from buyers to sellers. New efficiency helps give our producers an edge that can make or break opportunities in the international marketplace.

Seventy years ago, some argued that a transportation system on the Mississippi River was not justified. Congress decided that its role was not to try to predict the future but to shape the future and decided to invest in a system despite the naysayers. Over 80 million tons per year later, it is clear that the decision was wise.

Now, that system that was designed for paddlewheel boats and to last 50 years is nearly 70 years old and we must make decisions that will shape the next 50–70 years. As we look ahead, we must promote growth policies that help Americans who produce and employ.

We must work for policies that promote economic growth, job creation, and environmental sustainability. We know that trade and economic growth can be fostered or it can be discouraged by policies and other realities which include the quality of our transportation infrastructure.

So in 20 and 30 and 40 and 50 years, where will the growth in transportation occur to accommodate the growth in demand for commercial shipping? The Department of Transportation suggests that congestion on our roads and rails will double in the next quarter century. The fact of the matter is that the great untapped capacity is on our water.

This is good news because water transportation is efficient, it is safe, it conserves fuel, and it protects the air and the environment. One medium-sized barge tow can carry the freight of 870 trucks. That fact alone speaks volumes to the benefits of water. If we can, would we rather have 870 diesel engines on the roads of downtown St. Louis, or two diesel engines on the water watching the traffic buildup and smog glide by?

The veteran Chief Economist at USDA testified that transportation efficiency and the ability of farmers to win markets at higher prices are ''fundamentally related.'' He predicts that corn exports over the next 10 years will rise 45 percent, 70 percent of which will travel down the Mississippi.

Over the past 35 years, waterborne commerce on the Upper Mississippi River has more than tripled. The system currently carries 60 percent of our Nation's corn exports and 45 percent of our Nation's soybean exports and it does so at two-thirds the cost of rail—when rail is available.

Over the previous 11 years, the U.S. Army Corps of Engineers have spent $70 million doing a six year study. During that period, there have been 35 meetings of the Governors Liaison Committee, 28 meetings on the Economic Coordinating Committee, among the States along the Upper Mississippi and Illinois waterways, and there have been 44 meetings of the Navigation and Environmental Coordination Committee. Additionally, there have been 130 briefings for special interest groups, 24 newsletters. There have been six sets of public meetings in 46 locations with over 4,000 people in attendance. To say the least, this has been a very long, very transparent, and very representative process.

However, while we have been studying, our competitors have been building. Given the extraordinary delay so far, and given the reality that large scale construction takes not weeks or months, but decades, further delay is no longer an option.

This is why I am leased to be joined by a bipartisan group of Senators who agree that we must improve the efficiency and the environmental sustainability of our great resources. Today, we introduce legislation to adopt the initial recommendations of the Corps of Engineers and their public and private partners to increase the lock capacity on the Upper Mississippi and Illinois Rivers and the begin an ambitious program of ecosystem restoration.

This plan gets the Corps back in the business of building the future, rather than just haggling about predicting the future. More will need to be done later on ecosystem and lock expansions further upstream, but this begins the improvement schedule underway.

In this legislation, we authorize $1.46 billion for ecosystem restoration—two times the federal share of lock capacity expansion which we authorize on locks 20–25 on the Mississippi River and Peoria and LaGrange on the Illinois. The new 1,200 foot locks on the Mississippi River will provide equal capacity in the bottleneck region below the 1,200 foot lock 19 at Keokuk above locks 26 and 27 near St. Louis. Half the cost of the new locks will be paid for by private users who pay into the Inland Waterways Trust fund. Additional funds will be provided for mitigation and small scale and nonstructural measures to improve efficiency.

As we look ahead, the locks at 14–18 will have to be addressed as will further investments to ecosystem restoration efforts.

This effort is supported by a broad-based group of the States, farm groups, shippers, labor, and those who pay taxes into the Trust Fund for improvements.

I thank my colleagues for their work together on this bipartisan effort.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) in section 1103(a)(2) of the Water Resources Development Act of 1986 (100 Stat. 4225), Congress recognized the Upper Mississippi River System as ''a nationally significant ecosystem and a nationally significant commercial navigation system'' and declared that the system ''shall be administered and regulated in recognition of its several purposes'';

(2) inaction on construction of new locks will lead to economic decline, and inaction on implementation of an enhanced ecosystem restoration program will lead to further environmental decline;

(3) the Upper Mississippi River and Illinois Waterway carry approximately 60 percent of the corn exports of the United States and 45 percent of the soybean exports of the United States, providing a significant positive balance of trade benefit for the Nation;

(4) the movement of more than 100,000,000 tons of product supports 400,000 full- and part-time jobs in the United States, generating over $4,000,000,000 in income and $12,000,000,000 to $15,000,000,000 in economic activity;

(5) Midwestern utilities use coal, the second largest category of cargo shipped on the Upper Mississippi River System, to produce cost-efficient energy;

(6) keeping the cost of transportation lower through competition between transportation modes is the United States farmer's competitive advantage in capturing future global growth in agricultural exports;

(7) United States farm and trade policies work to open world markets and promote United States exports, and water resource policy has provided a low-cost transportation alternative to other modes;

(8) the Department of Agriculture projects that corn exports will grow 44 percent over the next decade, with a ⅓ increase in growth exported through the Gulf of Mexico;

(9) those transportation savings—

(A) provide higher income to farmers and rural communities; and

(B) generate Federal and State taxes to support community activities, quality of life, and national benefits;

(10) the construction of new 1,200-foot locks and lock extensions will provide more than 48,000,000 man-hours of employment over 10 to 15 years;

(11) foreign competitors have worked over the last 10 years to improve foreign transportation infrastructure to compete more effectively with United States production;

(12) the inland waterway transportation system moves 16 percent of the freight in the United States for 2 percent of the cost, including more than 100,000,000 tons on the Upper Mississippi River System;

(13) the Department of Transportation projects that freight congestion on the roads and rails in the United States will double in the next 25 years and that water transportation will need to play an increasing role in moving freight;

(14) the movement of 100,000,000 tons on the river system in 4,400 15-barge tows out of harms way would require an equivalent of 4,000,000 trucks or 1,000,000 rail cars moving directly through our communities;

(15) econometric models are useful analytic tools to provide valuable information, but are unable to account for every market trend, development, and public policy impact;

(16) the current capacity of the Upper Mississippi River System is—

(A) declining by 10 percent annually because of unplanned closures of a 70-year old infrastructure; and

(B) reducing the potential for sustained growth;

(17) the current 600-foot lock system was designed for steamboats, at a time when 4,000,000 tons moved on the Mississippi River and a total of 2,000,000,000 bushels of corn were produced nationally, compared to today, when 100,000,000 to 120,000,000 tons are shipped and the national production of corn exceeds 10,000,000,000 bushels;

(18) the 600-foot locks at Locks and Dam Nos. 20, 21, 22, 24, and 25 on the Upper Mississippi River and LaGrange and Peoria on the Illinois Waterway are operating at 80 percent utilization and are unable to provide for or process effectively the volatile growth of traditional export grain markets;

(19) based on the current construction schedule of new locks and dams on the inland system, lock modernization will need to take place over 30 years, starting immediately, as an imperative to avoid lost export grain sales and diminished national competitiveness;

(20) the Corps of Engineers has been studying the needs for national investments on the Upper Mississippi River System for the last 15 years and has based initial recommendations on the best available information and science;

(21) the Upper Mississippi and Illinois Rivers ecosystem consists of hundreds of thousands of acres of bottomland forests, islands, backwaters, side channels, and wetlands;

(22) the river ecosystem is home to 270 species of birds, 57 species of mammals, 45 species of amphibians and reptiles, 113 species of fish, and nearly 50 species of mussels;

(23) more than 40 percent of migratory waterfowl and shorebirds in North America depend on the river for food, shelter, and habitat during migration;

(24) the annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration;

(25) development since the 1930's has altered and reduced the biological diversity of the large flood plain river systems of the Upper Mississippi and Illinois Rivers;

(26) Congress recognizes the need for significant Federal investment in the restoration of the Upper Mississippi and Illinois River ecosystems;

(27) the Upper Mississippi River System provides important economic benefits from recreational and tourist uses, resulting in the basin's receiving more visitors annually than most National Parks, with the ecosystems and wildlife being the main attractions; and

(28) the Upper Mississippi River System—

(A) includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species, and a diverse assortment of other species and related habitats; and

(B) provides many recreational opportunities.

SEC. 2. ENHANCED NAVIGATION CAPACITY IMPROVEMENTS AND ECOSYSTEM RESTORATION PLAN FOR THE UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.

(a) DEFINITIONS.— In this section:

(1) PLAN.—The term ''Plan'' means the preferred integrated plan contained in the document entitled ''Integrated Feasibility Report and Programmatic Environmental Impact Statement for the UMR–IWW System Navigation Feasibility System'' and dated April 29, 2004.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Army.

(3) UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.—The term ''Upper Mississippi River and Illinois Waterway System'' means the projects for navigation and ecosystem restoration authorized by Congress for—

(A) the segment of the Mississippi River from the confluence with the Ohio River, River Mile 0.0, to Upper St. Anthony Falls Lock in Minneapolis-St. Paul, Minnesota, River Mile 854.0; and

(B) the Illinois Waterway from its confluence with the Mississippi River at Grafton, Illinois, River Mile 0.0, to T.J. O'Brien Lock in Chicago, Illinois, River Mile 327.0.

(b) AUTHORIZATION OF CONSTRUCTION OF NAVIGATION IMPROVEMENTS.—

(1) SMALL SCALE AND NONSTRUCTURAL MEASURES.—At a cost of $24,000,000 in funds from the general fund of the Treasury, to be matched in an equal amount from the Inland Waterways Trust Fund (which is paid by private users), the Secretary shall—

(A) construct mooring facilities at Locks 12, 14, 18, 20, 22, 24, and LaGrange Lock;

(B) provide switchboats at Locks 20 through 25 over 5 years for project operation; and

(C) conduct development and testing of an appointment scheduling system.

(2) NEW LOCKS.—At a cost of $730,000,000 in funds from the general fund of the Treasury, with an equal matching amount provided from the Inland Waterways Trust Fund (which is paid by the private users), the Secretary shall construct new 1,200-foot locks at Locks 20, 21, 22, 24, and 25 on the Upper Mississippi River and at LaGrange Lock and Peoria Lock on the Illinois Waterway.

(3) MITIGATION.—At a cost of $100,000,000 in funds from the general fund of the Treasury, with an equal matching amount provided from the Inland Waterway Trust Fund (which is paid by private users), the Secretary shall conduct mitigation for new locks and small scale and nonstructural measures authorized under paragraphs (1) and (2).

(c) ECOSYSTEM RESTORATION AUTHORIZATION.—

(1) OPERATION.—To ensure the environmental sustainability of the existing Upper Mississippi River and Illinois Waterway System, the Secretary shall, consistent with requirements to avoid any adverse effects on navigation, modify the operation of the Upper Mississippi River and Illinois Waterway System to address the cumulative environmental impacts of operation of the system and improve the ecological integrity of the Upper Mississippi River and Illinois River.

(2) ECOSYSTEM RESTORATION PROJECTS.—

(A) IN GENERAL.—The Secretary shall, consistent with requirements to avoid any adverse effects on navigation, carry out ecosystem restoration projects to attain and maintain the sustainability of the ecosystem of the Upper Mississippi River and Illinois River in accordance with the general framework outlined in the Plan.

(B) PROJECTS INCLUDED.—Ecosystem restoration projects may include—

(i) island building;

(ii) construction of fish passages;

(iii) floodplain restoration;

(iv) water level management (including water drawdown);

(v) backwater restoration;

(vi) side channel restoration;

(vii) wing dam and dike restoration and modification;

(viii) island and shoreline protection;

(ix) topographical diversity;

(x) dam point control;

(xi) use of dredged material for environmental purposes;

(xii) tributary confluence restoration;

(xiii) spillway modification to benefit the environment;

(xiv) land easement authority; and

(xv) land acquisition.

(C) COST SHARING.—

(i) IN GENERAL.—Except as provided in clause (ii), the Federal share of the cost of carrying out an ecosystem restoration project under this paragraph shall be 65 percent.

(ii) EXCEPTION FOR CERTAIN RESTORATION PROJECTS.—In the case of a project under this paragraph for ecosystem restoration, the Federal share of the cost of carrying out the project shall be 100 percent if the project—

(I) is located below the ordinary high water mark or in a connected backwater;

(II) modifies the operation or structures for navigation; or

(III) is located on federally owned land.

(iii) NONGOVERNMENTAL ORGANIZATIONS.—Nongovernmental organizations shall be eligible to contribute the non-Federal cost-sharing requirements applicable to projects under this paragraph.

(D) LAND ACQUISITION.—The Secretary may acquire land or an interest in land for an ecosystem restoration project from a willing owner through conveyance of—

(i) fee title to the land; or

(ii) a flood plain conservation easement.

(3) SPECIFIC PROJECTS AUTHORIZATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the ecosystem restoration projects described in paragraph (2) shall be carried out at a total construction cost of $1,460,000,000.

(B) LIMITATION ON AVAILABLE FUNDS.—Of the amounts made available under subparagraph (A), not more than $35,000,000 for each fiscal year shall be available for land acquisition under paragraph (2)(D).

(4) IMPLEMENTATION REPORTS.—

(A) IN GENERAL.—Not later than June 30, 2005, and every 4 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an implementation report that—

(i) includes baselines, benchmarks, goals, and priorities for ecosystem restoration projects; and

(ii) measures the progress in meeting the goals.

(B) ADVISORY PANEL.—

(i) IN GENERAL.—The Secretary shall appoint and convene an advisory panel to provide independent guidance in the development of each implementation report under subparagraph (A).

(ii) PANELISTS.—Panelists shall include—

(I) 1 representative of each of the State resource agencies (or a designee of the Governor of the State) from each of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;

(II) 1 representative of the Department of Agriculture;

(III) 1 representative of the Department of Transportation;

(IV) 1 representative of the United States Geological Survey;

(V) 1 representative of the United States Fish and Wildlife Service;

(VI) 1 representative of the Environmental Protection Agency;

(VII) 1 representative of affected landowners;

(VIII) 2 representatives of conservation and environmental advocacy groups; and

(IX) 2 representatives of agriculture and industry advocacy groups.

(iii) CO-CHAIRPERSONS.—The Secretary and the Secretary of the Interior shall serve as co-chairpersons of the advisory panel.

(d) AUTHORIZATION OF APPROPRIATIONS.—Except as otherwise provided in this section—

(1) there are authorized to be appropriated such sums as are necessary to carry out this section for fiscal years 2006 through 2020; and

(2) after fiscal year 2020—

(A) funds that have been made available under this section, but have not been expended, may be expended; and

(B) funds that have been authorized to be appropriated under this section, but have not been made available, may be made available.

Mr. HARKIN. Mr. President, I rise to discuss a bipartisan measure on which I have worked closely with my colleague from Missouri, Senator BOND. The purpose of this bill is to expand the transportation infrastructure and improve the ecosystem of the upper Mississippi River.

I have been deeply involved with Mississippi navigation issues because of their enormous importance to farmers in Iowa. Efficient river transportation is critical to keeping Iowa commodity costs competitive with foreign and domestic alternatives. When shipping on the river is constrained, costs rise. That, in turn, leads to price increases for moving bulk farm commodities by alternative means, mainly rail. These price differentials seem relatively small compared to the total price, but they make a huge difference in farm income.

Clearly, river traffic on the Mississippi is incredibly important to producers in my State. As a result of traffic congestion on the Mississippi, producers in the upper Midwest face longer shipping times, higher costs, and lost revenue. In the short run, enhanced traffic management can improve the situation. And it is important to have helper boats to push long barges through crowded locks. This bill addresses these two matters. But we need a longer-term solution, too. It is incredibly important that we modernize a number of the locks on the upper Mississippi—and we need to get started as soon as possible.

Existing law requires exhaustive analysis of river-use levels looking decades into the future. The studies required for such predictions are, by their very nature, highly speculative at best. There is no shortage of critics of the U.S. Army Corps of Engineers and its methods. But we can all agree that, to remain competitive, America needs to keep the arteries and veins of America's river transportation system in smooth running order. Last year, I visited Brazil and saw first-hand their remarkable efforts to modernize and improve their river transportation system. We need to keep up with countries like Brazil, if we are going to remain competitive. We simply cannot wait any longer to authorize construction of 1,200-foot locks so barge tows can move through the upper Mississippi and Illinois without being split.

However, this is not an easy issue. Over the years, I have heard time and time again from constituents and national leaders who are concerned about the environment, as I am. People correctly insist that we maintain a balance between navigation, flood control, and environmental protection. Habitat for many species, and the Mississippi river ecosystem as a whole, has deteriorated since the construction of the original lock system in the 1930's.

The Mississippi River is home to a wide variety of fish and birds, as well as other wildlife. All of this wildlife, and the abundant plant life, too, are important to the character and life of the Mississippi River. Approximately 40 percent of North America's waterfowl and shorebirds use the Mississippi Flyway. Parts of the Upper Mississippi River serve could well be the most important area for migrating diving ducks in the United States. The Mississippi River also serves as habitat for breeding and wintering birds, including the bald eagle.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species. The legislation we are proposing accomplishes this.

We understand that this bill is going to be a challenge in these difficult budget times. But to not act would be penny wise and pound foolish. We need to be thinking of the long-term economic health of our agricultural producers and shippers, hand in hand with the long-term health of the diverse ecosystems in the river. I believe the legislation we are proposing strikes a careful balance. I look forward to working closely with my colleagues to achieve those goals.

Mr. TALENT. Mr. President, I rise today to as a cosponsor of legislation to modernize our aging waterways infrastructure on the Upper Mississippi River and the Illinois River.

I am glad to join my colleague from Missouri, Senator BOND as well as Senators HARKIN and GRASSLEY in introducing a bill to upgrade and modernize the failing infrastructure on the Upper Mississippi and Illinois Rivers.

This $2.9 billion authorization will also bring great benefits to the fish habitat along the river through construction of fish passages, floodplain restoration and side channel restoration. I commend Senators BOND and HARKIN for working to find some balance in this important issue. I have always said, navigation and habitat restoration do not have to be mutually exclusive.

The locks and dams that are in place today are vital to our national economy. These national waterways serve as our competitive advantage to our overseas competitors, and this a clean and efficient way to move goods and commodities for export. The Upper Mississippi River and Illinois Waterway carry approximately 60 percent of the country's corn exports and 45 percent of our soybean exports, providing a significant positive balance of trade benefit for the Nation. Over half of the Soybeans produced in Missiouri head down the Mississippi River to the Gulf where they are shipped to markets overseas.

To me, this issue is a question of common sense. Water transportation is safe, clean and efficient. One medium barge tow can carry the same freight as 870 tractor trailer trucks. This relieves highway congestion, reduces shipping costs, and reduces fuels consumption and air emissions. Despite this, we'll still have opponents to this bill saying that it isn't good for the environment.

This bill is a win-win. It will take steps to reduce some of the burdens on our transportation systems, as well as providing more opportunities for our agricultural producers to export their products.

These locks are old and outdated. The current 600-foot lock system was designed for streamboats, at a time when 4 million tons moved on the Mississippi River and a total of 2 billion bushels of corn were produced nationally, compared to today, when 100 million to 120 million tons are shipped and the national production of corn exceeds 10 million bushels. We need to bring these locks into the 21st Century.

If we don't fix this aging infrastructure now, it will only become more costly. If I get a hole in the roof of my house, my wife and I may discuss how to fix it, but we know we will make the repair. If you don't make the repairs and upgrades, the problem only gets worse. That is what we have done to the locks and dams on the Mississippi River. I don't want this to be a situation where the roof actually falls in—we must modernize the system.

I commend my colleague from Missouri and his leadership on this issue. This is a good bill and I am happy to join him as a cosponsor. I look forward to continuing to work with him on this important issue.

Mr. GRASSLEY. Mr. President, I am pleased to be an original cosponsor of bipartisan legislation to authorize the modernization of the lock and dam infrastructure and enhanced environmental restoration on the Upper Mississippi and Illinois Rivers.

Modernizing the inland waterway transportation system remains a high priority for the Upper Mississippi River basin and for agricultural, commercial, and labor interests that rely on the river to transport their products. In addition to strong grassroots support for this endeavor, the State legislatures have passed resolutions endorsing lock and dam modernization, ecosystem restoration, and Congressional action.

Agriculture and related industries in Iowa and the other States on the Upper Mississippi remain competitive in world markets, despite higher production costs, because of the efficiencies inherent in river transport. More than 60 percent of all grain exports move from the Upper Mississippi, making

this competitive advantage vital to their ability to operate their business. Over 400,000 full and part-time jobs in our basin are connected to the river. Without modernization, Midwest producers will not be able to compete in anticipated world grain export growth.

Furthermore, a recent study estimates the loss of 30,000 jobs nationwide, $562 million annually in lost farm income and $185 million annually in lost State and local tax receipts if the lock and dam system is not upgraded. Providing U.S. agricultural producers every opportunity to export their products to world markets is essential for their financial well-being and future viability.

While it is important to consider economic benefits, we must also protect the ecosystem of the river. A cooperative solution can meet the needs of farmers and waterway users while at the same time improve the environment and stem the decline of the Rivers' ecosystems through enhanced authorities. Restoring the ecosystem is not mutually exclusive to lock modernization.

After 12 years and $70 million of study, we firmly believe that the time has come to take action. I urge my colleagues to support this legislation providing initial authorization to begin the modernization process and enhance the authorities to address broader ecosystem restoration. Without immediate action, the health of both the agriculture economy and river ecosystem will continue to decline.

Mr. COLEMAN. Mr. President, the Mississippi River is a national treasure and this legislation authorizes programs that will help restore water quality and rehabilitate wildlife and wildlife habitat on the river.

The annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration. The Upper Mississippi River ecosystem consists of hundreds of thousands of acres of bottomland forests, islands, backwaters, side channels and wetlands. The Upper Mississippi River system includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species and a diverse assortment of other species and related habitats.

I am very pleased that this bill gives ecosystem restoration the attention that it deserves.

The Department of Transportation projects that water transportation will play an increasing role in moving freight due to congestion on roads and railways. More efficient use of river transportation will help the environment reducing traffic congestion and emissions on our Nation's highways. For example, a 15 barge tow can carry as much as 870 semi-tractor trailer trucks. Fuel efficiency for barge transportation is 2.5 times that of rail transport and nearly 10 times that of truck transport.

Improving navigation efficiency on the upper Mississippi and Illinois Rivers has been a high priority issue for Midwest farmers for years. Our agricultural competitive position in accessing world markets is greatly impacted by the efficiency of our transportation system. Farmers depend on the lock system to move grain efficiently to market. They also depend on the locks for the movement of crop production inputs up the Mississippi River.

Our entire region benefits as commercial barge traffic moves not only agricultural products, but also aggregate, cement, salt, and other important items efficiently, safely and in an environmentally sound manner.

The Upper Mississippi River Ecosystem Restoration and navigation bill also represents a landmark opportunity to address environmental and economic ramifications of the entire lock and dam system, rather than the previous piecemeal approaches. The Corps of Engineers has responded to critics who called for a comprehensive evaluation, coupling an assessment of the economic need for navigation improvements and the ecosystem restoration components necessary to protect our region in the process. As outlined in this legislation, the $1.46 billion ecosystem restoration package includes the construction of fish passages, floodplain restoration on thousands of acres and side channel restoration, along with other measures.

This is indeed a new approach to improving our economy, by providing construction jobs and boosting our farm economy, and protecting our environment, by increasing the efficiency of barge traffic while initiating important water quality measures.

I am proud to be a coauthor of this important legislation.

Mr. FITZGERALD. Mr. President, I rise today with Senator BOND in support of a bill to put into place recommendations by the Army Corps of Engineers for navigation capacity improvements and ecosystem restoration for the Upper Mississippi and Illinois Rivers Waterway System.

Modernizing the inland waterway transportation system is a high priority for the Upper Mississippi River basin and for agricultural, commercial, and labor interests that rely on the river to transport their products. Without modernization, Midwest producers will not be able to fully participate in growing world markets.

On April 29, 2004, the Army Corps of Engineers released its proposal to upgrade the locks and to provide for ecosystem restoration on these two waterways. I have consistently fought for funding to revitalize these locks to help Illinois producers more easily transport their products to market. I have joined Senator BOND as a cosponsor to this bill because our country's agriculture and business interests have waited far too long for these improvements.

The Mississippi River plays a vital role in our economy. The Mississippi and Illinois Rivers are two of the major routes by which Illinois agricultural commodities are distributed to the world. In fact, roughly 70 percent of U.S. agricultural products are transported through the Mississippi River system. More than 60 million tons of commodities are transported on the Illinois River alone, including more than half of Illinois' annual corn crop.

By controlling the water's flow, locks and dams help facilitate the transportation of commodities along rivers. The outdated and deteriorating 600-foot locks on the Mississippi and Illinois Rivers create unnecessary delays because the locks are too small to accommodate modern size barge tows. This causes transportation costs to rise and results in lost market share for Illinois agriculture producers.

Along with modernizing this river system's locks, we must not allow the deterioration of its ecosystem. A cooperative solution can meet the needs of waterway users and, at the same time, improve the environment and stem the decline of the Mississippi and Illinois Rivers' ecosystems. This legislation strikes a good balance by upgrading the lock system while protecting the ecosystem of these rivers.

I commend Senator BOND for introducing this important legislation and am pleased to join him in cosponsoring this bill. Illinois farmers and other producers have waited far too long for these improvements. This bill brings the Upper Mississippi and Illinois Rivers Waterway System into the 21st century.

By Mr. NELSON of Florida:

S. 2472. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for other purposes; to the Committee on the Judiciary.

Mr. NELSON of Florida. Mr. President, I rise today to express my deep concern about an issue that illustrates the continuing erosion of Americans' privacy rights. My concern is related to the practice of outsourcing. When U.S. companies outsource sensitive customer information for processing overseas, they may be outsourcing our privacy rights along with it.

We all know that recently it has become popular for American companies to send internal paperwork to be done in other countries, by foreign companies.

When a U.S. company allows a foreign company to process customer data, the foreign company may be given access to the most sensitive types of customer information. Our health records, bank account numbers, social security numbers, tax forms, and credit card numbers are now being

shipped abroad—without the knowledge of the customer and beyond the reach of U.S. privacy laws.

This phenomenon means that consumers are almost powerless to stop foreign scam artists from misusing their sensitive information. What types of abuses can occur under this scenario?

In one recent shocking example, a U.S. hospital hired a medical transcriber in Pakistan through a subcontractor to work with sensitive patient health information. Later, the foreign worker claimed that she had not been paid for her work.

So, you know what she did? She threatened to post patients' medical records online unless she was paid. Luckily, she got her paycheck and doesn't seem to have posted anything online.

But this situation shows us the potential for gross violations of consumer privacy. The U.S. hospital said that it never even knew that the foreign transcriber had been hired through a subcontractor and it therefore had never bound her contractually to follow any privacy or security standards.

Another potential abuse of offshoring sensitive customer data is identity theft. The illegal theft of someone's identity is a profoundly disturbing and costly problem in this information age.

Moreover, illegal misuse of sensitive information also can have national security implications. For example, data about some of our Nation's power grids allegedly has been outsourced to companies overseas. Imagine the harm that terrorists might do if they got hold of that type of confidential information.

As our global economy expands at such a rapid pace, we simply cannot tolerate the outsourcing of American's privacy rights overseas. We need to be proactive on this potentially explosive issue. Make no mistake, the Pakistani transcriber incident is not the first or the last time that sensitive customer information becomes endangered in a foreign country. The time to act is now, instead of reacting only after our privacy rights are further eroded.

In light of these circumstances, today I am introducing a bill—along with Senator FEINSTEIN—that begins to address these privacy and security concerns. The bill is called the INFO Act, which is short for The Increasing Notice of Foreign Outsourcing Act.

The INFO Act is designed to help ensure that sensitive consumer information is protected and that U.S. companies can be held accountable for breakdowns in the security of customer information.

Specifically, the INFO Act that we are introducing today would require the following things: First, U.S. companies in the health care industry and the financial industry must tell their customers that their sensitive health information and financial information is being processed by companies in foreign nations, where privacy safeguards may be less stringent.

Second, U.S. companies in the health care industry and the financial industry must promise their customers that they are complying with U.S. privacy laws, which are designed to keep sensitive customer information secure even when it is outsourced.

Third, U.S. companies in the health care industry and financial industry must make sure that each foreign company that is handling sensitive customer information has agreed by contract to meet U.S. privacy standards and to keep sensitive customer information secure.

Fourth, U.S. companies may examine the business operations of the foreign company to make sure the foreign company is meeting privacy standards and is keeping sensitive customer information secure.

Fifth, a foreign company must notify the U.S company of any data security breach. The U.S. company must then notify the U.S. regulatory agency, which can then hold the U.S. company accountable for the actions of the foreign company.

Finally, an employee of a foreign call center must tell a U.S. customer where the employee is located, if the U.S. customer asks for this information.

I strongly believe that we need to act now, before the privacy issues raised by offshoring begin to explode.

Let me emphasize that I see this bill as both pro-consumer and pro-business. Consumers will be informed about how their sensitive information is handled and they can learn when security breaches occur. Additionally, foreign companies that handle customer data will be held accountable to the U.S. company that gives them their work. And U.S. companies will be upfront in informing their customers about offshoring sensitive data before customer backlash occurs.

With this sort of system in place, we hopefully can reduce the chances of customer data being misused, and allow U.S. companies to play on a level playing field where all interested parties know the rules of the game.

I have a history of trying to solve consumer issues in ways that are not needlessly burdensome to U.S. businesses. That is why my office, as well as Senator FEINSTEIN's office, has met several times with industry representatives during the development of this bill.

I was interested to find ways for businesses to protect consumer privacy rights without having to sharply raise prices or limit products and services. I believe that the INFO Act has achieved those goals.

Consumer privacy has always been one of my top priorities. Now, as always, I look forward to working with all interested parties to resolve this consumer privacy issue in a timely and effective manner.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2472

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 ''Increasing Notice of Foreign Outsourcing Act''.

SEC. 2. HEALTH PRIVACY.

(a) FOREIGN-BASED BUSINESS ASSOCIATE.—In this section, the term ''foreign-based business associate'' means a business associate, as defined under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), whose operation is based outside the United States and that receives protected health information and processes such information outside the United States.

(b) NOTICES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall revise the regulations prescribed pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) to require a covered entity (as defined under such regulations and referred to in this section as a ''covered entity''), that outsources protected health information (as defined under such regulations and referred to in this section as ''protected health information''), outside the United States to include in such entity's notice of privacy protections the following:

(A) The following information in simple language:

(i) Notification that the covered entity outsources protected health information to foreign-based business associates.

(ii) Any risks and consequences to the privacy and security of protected health information that arise as a result of the processing of such information outside the United States.

(iii) Additional measures the covered entity is taking to protect the protected health information outsourced for processing outside the United States.

(B) A certification that the covered entity has taken reasonable steps to ensure that the handling of protected health information will be done in compliance with applicable laws in all instances where protected health information is processed outside the United States, including the reasons for the certification.

(2) EFFECTIVE DATE.—A covered entity shall be required to include in such entity's notice of privacy protections the information and certification described in paragraph (1) for notices issued on or after the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection shall be construed to require a covered entity to reissue notices issued before the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such notices the information and certification described in paragraph (1).

(c) RULEMAKING.—

(1) IN GENERAL.—

(A) REGULATORY AUTHORITY.—The Secretary shall—

(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this section with respect to foreign outsourcing; and

(ii) determine the appropriate penalties to impose upon a covered entity for a violation of a provision of this subsection or subsection (b).

(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this Act.

(2) NECESSARY REGULATIONS.—The Secretary shall prescribe regulations—

(A) requiring that a contract between a covered entity and such entity's foreign-based business associate contain a provision that provides such entity with the right to audit such associate, as needed, to monitor performance under the contract; and

(B) requiring that foreign-based business associates and subcontractors of covered entities be contractually bound by Federal privacy standards and security safeguards.

(d) BREACH OF SECURITY.—

(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term ''breach of security of the system''—

(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to protected health information maintained by the covered entity, foreign-based business associate, or subcontractor; and

(B) does not include good faith acquisition of protected health information by an employee or agent of the covered entity, foreign-based business associate, or subcontractor for the purposes of the entity, associate, or subcontractor, if the protected health information is not used or subject to further unauthorized disclosure.

(2) DATABASE SECURITY.—

(A) COVERED ENTITY.—A covered entity—

(i) that owns or licenses electronic data containing protected health information shall, following the discovery of a breach of security of the system containing such data, notify the Secretary of such breach; or

(ii) that receives a notification under subparagraph (B) of a breach, shall notify the Secretary of such breach.

(B) OTHER PARTIES.—

(i) THIRD PARTY.—The Secretary shall require that a contract between a covered entity and such entity's foreign-based business associate contain a provision that if the foreign-based business associate (or any subcontractor of such associate) owns or licenses electronic data containing protected health information that was provided to the associate through the covered entity, the associate (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

(I) notify the entity from which it received the protected health information of such breach; and

(II) provide a description to the entity from which it received the protected health information of any corrective actions taken to guard against future security breaches.

(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the protected health information of such breach until the notification reaches the foreign-based business associate who shall, in turn, notify the covered entity of such breach.

(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

(i) the discovery of a breach of security of the system; and

(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.

SEC. 3. FINANCIAL PRIVACY.

(a) FOREIGN-BASED BUSINESS.—Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

''(12) FOREIGN-BASED BUSINESS.—The term 'foreign-based business' means a non-affiliated third party whose operation is based outside the United States and that receives nonpublic personal information and processes such information outside the United States.''.

(b) FINANCIAL NOTICES.—

(1) IN GENERAL.—Section 503(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(b)) is amended—

(A) in paragraph (3), by striking ''and'' after the semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) if the financial institution outsources nonpublic personal information outside the United States—

''(A) information informing the consumer in simple language—

''(i) that the financial institution outsources nonpublic personal information to foreign-based businesses;

''(ii) of any risks and consequences to the privacy and security of an individual's nonpublic personal information that arise as a result of the processing of such information outside the United States; and

''(iii) of the additional measures the financial institution is taking to protect the nonpublic personal information outsourced for processing outside the United States; and

''(B) a certification that the financial institution has taken reasonable steps to ensure that the handling of nonpublic personal information will be done in compliance with applicable laws in all instances where nonpublic personal information is processed outside the United States, including the reasons for the certification.''.

(2) EFFECTIVE DATE.—A financial institution shall include in such institution's disclosure the information and certification described in the amendment made by paragraph (1)(C) for disclosures provided on or after the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection, or the amendments made by this subsection, shall be construed to require a financial institution to reissue disclosures provided before the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such disclosures the information and certification described in the amendment made by paragraph (1)(C).

(c) RULEMAKING.—Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804) is amended by adding at the end the following:

''(c) RULEMAKING ON FOREIGN OUTSOURCING.—

''(1) IN GENERAL.—

''(A) REGULATORY AUTHORITY.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission (referred to in this subsection as the 'regulatory agencies') shall—

''(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this subtitle with respect to foreign outsourcing, with respect to the financial institutions subject to their jurisdiction under section 505; and

''(ii) determine the appropriate penalties to impose upon financial institutions for a violation of a provision of this subsection.

''(B) COORDINATION, CONSISTENCY, AND COMPARABILITY.—The regulatory agencies shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

''(C) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

''(2) NECESSARY REGULATIONS.—The regulatory agencies shall prescribe regulations—

''(A) requiring that a contract between a financial institution and such institution's foreign-based business contain a provision that provides such institution with the right to audit such business, as needed, to monitor performance under the contract; and

''(B) requiring that foreign-based businesses and subcontractors of financial institutions be contractually bound by Federal privacy standards and security safeguards.''.

(d) BREACH OF SECURITY.—Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802) is amended by adding at the end the following:

''(f) BREACH OF SECURITY.—

''(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term 'breach of security of the system'—

''(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to nonpublic personal information maintained by the financial institution, foreign-based business, or subcontractor; and

''(B) does not include good faith acquisition of nonpublic personal information by an employee or agent of the financial institution, foreign-based business, or subcontractor for the purposes of the institution, business, or subcontractor, if the nonpublic personal information is not used or subject to further unauthorized disclosure.

''(2) DATABASE SECURITY.—

''(A) FINANCIAL INSTITUTION.—A financial institution—

''(i) that owns or licenses electronic data containing nonpublic personal information shall, following the discovery of a breach of security of the system containing such data, notify the entity under which the institution is subject to jurisdiction under section 505 of such breach; or

''(ii) that receives a notification under subparagraph (B) of a breach, shall notify the entity under which the institution is subject to jurisdiction under section 505 of such breach.

''(B) OTHER PARTIES.—

''(i) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission shall require, with respect to the financial institutions subject to their jurisdiction under section 505, that a contract between a financial institution and such institution's foreign-based business contain a provision that if the foreign-based business (or any subcontractor

of such business) owns or licenses electronic data containing nonpublic personal information that was provided to the business through the financial institution, the business (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

''(I) notify the entity from which it received the nonpublic personal information of such breach; and

''(II) provide a description to the entity from which it received the nonpublic personal information of any corrective actions taken to guard against future security breaches.

''(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the nonpublic personal information of such breach until the notification reaches the foreign-based business who shall, in turn, notify the financial institution of such breach.

''(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

''(i) the discovery of a breach of security of the system; and

''(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

''(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.''.

SEC. 4. FOREIGN CALL CENTERS.

(a) FOREIGN CALL CENTER DEFINED.—In this section, the term ''foreign call center'' means a foreign-based service provider or a foreign-based subcontractor of such provider that—

(1) is unaffiliated with the entity that utilizes such provider or subcontractor; and

(2) provides customer-based service and sales or technical assistance and expertise to individuals located in the United States via the telephone, the Internet, or other telecommunications and information technology.

(b) REQUIREMENT.—A contract between a foreign call center and an entity that utilizes such foreign call center to initiate telephone calls to, or receive telephone calls from, individuals shall include a requirement that each employee of the foreign call center disclose the physical location of such employee upon the request of such individual.

(c) CERTIFICATION REQUIREMENT.—An entity described in subsection (b) shall submit an annual certification to the Federal Trade Commission on whether or not the entity and its subsidiaries, and the foreign call center employees and its subsidiaries, have complied with subsection (b). Such annual certifications shall be made available to the public.

(d) NONCOMPLIANCE.—An entity described in subsection (b) or its subsidiaries that violates subsection (b) shall be subject to such civil penalties as the Federal Trade Commission prescribes under subsection (e).

(e) REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Federal Trade Commission shall prescribe such regulations as are necessary for effective monitoring and compliance with this section. Such regulations shall include appropriate civil penalties for noncompliance with this section.

Mrs. FEINSTEIN. Mr. President, I rise to introduce, along with my colleague, Senator BILL NELSON, the Increasing Notice of Foreign Outsourcing Act, or the INFO Act. This legislation will help safeguard Americans' most important and sensitive personal information when it is sent abroad for processing to countries that may have lax security and privacy standards.

The bill will ensure that American companies notify consumers of a business's outsourcing practices. It will require American companies to certify the adequacy of their outsourcing protections. And it will require American companies to hold their foreign business partners accountable for protecting Americans' data.

In order to protect the information of Americans that is now vulnerable abroad, this bill calls for the following key safeguards:

First, the bill requires American health and financial companies to notify consumers when sending their information abroad, and to certify the safety of the overseas processing. We drafted provisions carefully to minimize the burden on businesses, so they will expand on privacy disclosures that companies already make under Federal law.

Second, American companies processing health or financial data must include clauses in contracts with their foreign partners to allow audits of their foreign information processors and to enforce American privacy standards.

Third, the bill creates a system to inform American companies and Federal regulators of any security breaches involving American health or financial information at facilities operated outside the United States.

And fourth, the bill gives Americans the right to have workers at foreign call centers disclose where they are calling from.

The bill also gives Federal agencies the power to enforce these provisions. It is important to emphasize that this bill is drafted to minimize the burdens on businesses, by expanding on existing privacy data and security laws.

While many are concerned about how outsourcing abroad hurts American workers, outsourcing also poses risks to the security and privacy of American consumers' personal data. The recent wave of international outsourcing means that we are flooding the entire world with our most sensitive information.

Once sent abroad, the information is at risk because our Federal laws do not apply to foreign companies operating overseas. Another reason is because many foreign countries have far weaker security laws than our own. For instance, India still has no laws to protect personal and private data. And still another reason is because it is extremely difficult for Americans to use foreign courts to sue foreign companies that misuse American data.

These factors leave the most intimate details of the lives of uncountable Americans vulnerable to lax security and to malicious identity thieves.

And there is even more at stake. Information outsourcing poses a direct risk to national security. We are painfully aware that some people want to steal the identity of individual Americans in order to evade our homeland defenses and harm us all.

International information outsourcing has skyrocketed in recent years. Consider the following:

Tax returns for about 200,000 Americans were prepared in India this year. To put this number in context, India workers processed only about 1,000 U.S. tax returns 2 years ago. Tax returns have Americans' names, Social Security numbers, income, employers, addresses, and other details.

The American Association of Medical Transcription estimates that 10 percent of all medical transcription of doctors' notes is being done abroad.

An executive from Trans Union, one of the major credit agencies in the United States, told The San Francisco Chronicle that:

A hundred percent of our mail regarding customer disputes is going to go to India at some point.

If anyone doubts the risk that international outsourcing poses to Americans, consider these incidents:

Recently, a low-paid transcriber in Pakistan was working as a subcontractor to the University of California Medical Center in San Francisco. That foreign worker threatened to post confidential patient information on the Internet unless the university coaxed her boss into paying some of her bills.

Three weeks later, a strikingly similar incident occurred with a worker in Bangalore, India.

In another incident, in Noida, India, an employee working at a call center used an American's credit card information to buy electronics equipment from Sony.

Also in India, there is a burgeoning black market in personal identity information. According to one report, stolen names, addresses, phone numbers, the bank a person has an account with, and even bank account numbers are sold on the streets for mere pennies.

These are just a few incidents. No one knows how many other times workers have done similar things. And that is a big part of the problem. It is not merely that Americans' identities are vulnerable when sent abroad. The problem is that American companies obscure how much outsourcing they do, and when they are doing it.

For example, according to the San Jose Mercury News, a worker at a call center dealing with State benefits refused to identify his location. The supervisor, when she picked up the call, refused to say anything more than that she worked for Citicorp.

In essence, the problem of obscurity is so bad that we can list only a few incidents reported by the media. How many security breaches have taken place? Have consumers been informed when their information is abroad and at risk? How much money has this cost consumers? We don't know.

And so far, American regulatory agencies have been unable to say despite their oversight of these industries. And American companies have stayed mum. We need to break the silence.

The fact is, our Government is simply not doing enough to protect consumers. Earlier this month I received a letter from John D. Hawke, Jr., who is the U.S. Comptroller of the Currency. He heads one of the agencies that regulates U.S. financial institutions and banks.

Mr. Hawke wrote to me that the Office of the Comptroller of the Currency, known as the OCC, does not directly regulate foreign contractors that work for U.S. banks. Specifically, he wrote:

> [T]he OCC focuses its supervisory reviews regarding foreign servicing relationships on whether the serviced banks have adequate procedures in place. . . .

That means the OCC is focusing on the American companies, not the foreign ones.

I also learned from the OCC that it already suggests certain safeguards for American banks to use when they hire foreign information processors. The OCC asks U.S. banks to use contract provisions to make sure that foreign companies use secure methods to process data, and to let the U.S. companies audit the foreign companies.

But the OCC only suggests that companies adopt these safeguards. The legislation we are introducing today would take safeguards like the OCC's a step further, and make them mandatory.

Now is the time to act. We know that there are criminal syndicates, such as in Nigeria, that have fraudulently obtained bank information to steal untold fortunes. We can hardly imagine the damage such organizations can do with a vast new source of sensitive financial data from international information outsourcing.

In short, this bill accomplishes four goals crucial to protecting Americans' sensitive data sent abroad. It requires companies to give notice that they send consumers' sensitive data abroad. It ensures that U.S. companies can audit their foreign partners, and impose U.S. privacy standards on them. It establishes a system to ensure that foreign and U.S. companies will report security breaches to the U.S. Government. And it allows American consumers to demand to know where foreign call centers are located.

This bill helps to protect outsourced information while minimizing burdens on American businesses. I urge my colleagues to join us in this effort.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 366—SUPPORTING MAY 2004 AS NATIONAL BETTER HEARING AND SPEECH MONTH AND COMMENDING THOSE STATES THAT HAVE IMPLEMENTED ROUTINE HEARING SCREENINGS FOR EVERY NEWBORN BEFORE THE NEWBORN LEAVES THE HOSPITAL

Mr. COLEMAN submitted the following resolution; which was considered and agreed to:

S. RES. 366

Whereas the National Institute on Deafness and Other Communication Disorders reports that approximately 28,000,000 people in the United States experience hearing loss or have a hearing impairment;

Whereas 1 out of every 3 people in the United States over the age of 65 have hearing loss;

Whereas the overwhelming majority of people in the United States with hearing loss would benefit from the use of a hearing aid and fewer than 7,000,000 people in the United States use a hearing aid;

Whereas 30 percent of people in the United States suffering from hearing loss cite financial constraints as an impediment to hearing aid use;

Whereas hearing loss is among the most common congenital birth defects;

Whereas a delay in diagnosing the hearing loss of a newborn can affect the social, emotional, and academic development of the child;

Whereas the average age at which newborns with hearing loss are diagnosed is between the ages of 12 to 25 months; and

Whereas May 2004 is National Better Hearing and Speech Month, providing Federal, State, and local governments, members of the private and nonprofit sectors, hearing and speech professionals, and all people in the United States an opportunity to focus on preventing, mitigating, and treating hearing impairments: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of May 2004 as National Better Hearing and Speech Month;

(2) commends those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; and

(3) encourages all people in the United States to have their hearing checked regularly.

SENATE RESOLUTION 367—HONORING THE LIFE OF MILDRED MCWILLIAMS ''MILLIE'' JEFFREY (1910–2004) AND HER CONTRIBUTIONS TO HER COMMUNITY AND TO THE UNITED STATES

Ms. STABENOW (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 367

Whereas Mildred McWilliams ''Millie'' Jeffrey, a social justice activist, a retired UAW Director of the Consumer Affairs Department, and a Governor Emerita of Wayne State University, died peacefully surrounded by her family on March 24, 2004, in the Metro Detroit, Michigan area at the age of 93;

Whereas in 2000, President Clinton awarded Millie the Medal of Freedom, the highest civilian award bestowed by the United States Government;

Whereas in seeking world peace by ensuring equality for all, Millie spent a lifetime working on labor, civil rights, education, health care, youth employment, and recreation issues;

Whereas Millie brought inspiration and humor to the many people she touched and did so with optimism and undaunted spirit;

Whereas Millie, a woman of influence and of great moral character, was always a voice of conscience and reason;

Whereas Millie provided a voice for those that could not be heard and hope for those that no longer believed, and because of this her legacy will continue to live on for generations to come;

Whereas Millie's list of accomplishments and awards is long but what she is most remembered for is her zest for organizing, including mentoring legions of women and men in the labor, civil rights, women's rights, and peace movements;

Whereas President Clinton stated that ''her impact will be felt for generations, and her example never forgotten'';

Whereas Millie was born in Alton, Iowa on December 29, 1910, and was the oldest of 7 children;

Whereas in 1932 Millie graduated from the University of Minnesota with a bachelor's degree in psychology and in 1934 Millie received a master's degree in social economy and social research from Bryn Mawr College;

Whereas Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia, Pennsylvania, and later became Educational Director of the Pennsylvania Joint Board of Shirt Workers;

Whereas in 1936, Millie married fellow Amalgamated Clothing Workers of America organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers;

Whereas during World War II, the Jeffreys worked in Washington, D.C., as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther;

Whereas the Jeffreys moved to Detroit, Michigan in 1944 when Victor Reuther offered Millie a job as director of the newly formed UAW Women's Bureau;

Whereas Millie's commitment to equal rights fueled her career at the UAW;

Whereas Millie organized the first UAW women's conference in response to the massive postwar layoffs of women production workers, who were replaced by returning veterans;

Whereas from 1949 until 1954, Millie ran the UAW's radio station;

Whereas Millie moved on to direct the Community Relations Department of the UAW;

Whereas Millie served as Director of the Consumer Affairs Department of the UAW from 1968 until her retirement in 1976;

Whereas Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King, Jr. in the 1960s;

Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that ''in the civil rights movement, she knew how to fight without being disagreeable'';

Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990);

Whereas Millie served 3 terms as chair of the Wayne State University Board of Governors;

Whereas Millie loved Wayne State University and was a long-time resident on campus;

Whereas Millie never tired of showing visitors around her ''neighborhood''—the Adamany Undergraduate Library, the

Hilberry Theatre, and the Walter P. Reuther Library of Wayne State University;

Whereas Millie thrived in the academic environment enriched by Wayne State University students;

Whereas whether discussing mathematics with teenagers in Wayne State University's Math Corps or strategizing at the United Nations Conferences on Women about the plight of sweatshop workers, Millie's capacity for connecting with people was unmatched;

Whereas Millie was inducted into the Michigan Women's Hall of Fame and was an original member of the board of the Michigan Women's Foundation;

Whereas Millie served in various leadership roles in a wide variety of national and State organizations;

Whereas Millie served on the peer review board of Blue Cross;

Whereas Millie also was an active member of the First Unitarian Universalist Church in Detroit; and

Whereas the United States mourns the death of Mildred McWilliams ''Millie'' Jeffrey: Now, therefore be it

Resolved, That the Senate—

(1) honors the life of Mildred McWilliams ''Millie'' Jeffrey and her contributions to her community and to the United States; and

(2) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Millie Jeffrey.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3225. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3226. Mr. CRAPO proposed an amendment to amendment SA 3170 proposed by Mr. GRAHAM of South Carolina to the bill S. 2400, supra.

SA 3227. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3228. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3229. Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3230. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3231. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3232. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3233. Mr. LOTT (for himself and Mr. GRAHAM, of South Carolina) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3234. Mr. NELSON, of Florida (for himself, Mrs. DOLE, Mr. CORZINE, Mr. NELSON, of Nebraska, Mr. LEAHY, Mrs. MURRAY, and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3235. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3236. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3237. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3238. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3225. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 147, after line 21, insert the following:

SEC. 717. REPORTING OF SERIOUS ADVERSE HEALTH EXPERIENCES.

(a) IN GENERAL.—The Secretary of Defense may not permit a dietary supplement containing a stimulant to be sold on a military installation unless the manufacturer of such dietary supplement submits any report of a serious adverse health experience associated with such dietary supplement to the Secretary of Health and Human Services, who shall make such reports available to the Surgeon Generals of the Armed Forces.

(b) EFFECT OF SECTION.—Notwithstanding section 201(ff)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)(2)) and paragraph (3) of subsection (c), this section does not apply to a dietary supplement containing caffeine that is intended to be consumed in liquid form.

(c) DEFINITIONS.—In this section—

(1) The term ''dietary supplement'' has the same meaning given the term in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

(2) The term ''serious adverse health experience'' means an adverse event that is associated with the use of a dietary supplement in a human, without regard to whether the event is known to be causally related to the dietary supplement, that—

(A) results in—

(i) death;

(ii) a life-threatening condition;

(iii) inpatient hospitalization or prolongation of hospitalization;

(iv) a persistent or significant disability or incapacity; or

(v) a congenital anomaly, birth defect, or other effect regarding pregnancy, including premature labor or low birth weight; or

(B) requires medical or surgical intervention to prevent 1 of the outcomes described in clauses (i) through (v) in subparagraph (A).

(3) The term ''stimulant'' means a dietary ingredient that has a stimulant effect on the cardiovascular system or the central nervous system of a human by any means, including—

(A) speeding metabolism;

(B) increasing heart rate;

(C) constricting blood vessels; or

(D) causing the body to release adrenaline.

SA 3226. Mr. CRAPO proposed an amendment to amendment SA 3170 proposed by Mr. GRAHAM of South Carolina to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike all after the first word of the matter proposed to be inserted and insert the following:

3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

(c) This section shall become effective 1 day after enactment.

SA 3227. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 280, after line 22, insert the following:

SEC. 1068. RECEIPT OF PAY BY RESERVES FROM CIVILIAN EMPLOYERS WHILE ON ACTIVE DUTY IN CONNECTION WITH A CONTINGENCY OPERATION.

Section 209 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member's employment had not been interrupted by such call or order to active duty.''.

SA 3228. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the

bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT FOR THE NAVY.

(a) INCREASE IN AMOUNT FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation, Navy, is hereby increased by $3,000,000.

(b) AVAILABILITY OF AMOUNT FOR INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT.—Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation, Navy, as increased by subsection (a), $3,000,000 shall be available for infrastructure system security engineering development.

(c) OFFSET.—(1) The amount authorized to be appropriated by section 101(5) for other procurement, Army, is hereby reduced by $1,000,000, with the amount of the reduction to be allocated to Buffalo Landmine Vehicles.

(2) The amount authorized to be appropriated by section 102(b) for procurement for the Marine Corps is hereby reduced by $500,000, with the amount of the reduction to be allocated to Combat Casualty Care.

(3) The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation, Army, is hereby reduced by $1,000,000, with the amount of the reduction to the allocated to Active Coating Technology.

(4) The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby reduced by $500,000, with the amount of the reduction to be allocated to Radiation Hard Complimentary Metal Oxide Semi-Conductors.

SA 3229. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, after line 23, insert the following:

SEC. 403. EXCLUSION OF SERVICE ACADEMY PERMANENT AND CAREER PROFESSORS FROM A LIMITATION ON CERTAIN OFFICER GRADE STRENGTHS.

Section 523(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(8) Up to 50 permanent professors of each of the United States Military Academy and the United States Air Force Academy, and up to 50 professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy).''.

SA 3230. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) CONTRACTS AUTHORIZED.—The Secretary of Defense may enter into an energy savings performance contract under this section for the sole purpose of achieving energy savings and benefits ancillary to that purpose. The Secretary may incur obligations under the contract to finance energy conservation measures so long as guaranteed savings exceed the debt service requirements.

(b) TERMS AND CONDITIONS.—

(1) CONTRACT PERIOD.—Notwithstanding any other provision of law, an energy savings performance contract may be for a period of up to 25 years beginning on the date on which the first payment is made by the Secretary pursuant to the contract. The contract need not include funding of cancellation charges (if any) before cancellation, if—

(A) the contract was awarded in a competitive manner, using procedures and methods established under this section;

(B) the Secretary determines that funds are available and adequate for payment of the costs of the contract for the first fiscal year;

(C) the contract is governed by part 17.1 of the Federal Acquisition Regulation; and

(D) if the contract contains a clause setting forth a cancellation ceiling in excess $10,000,000, the Secretary provides notice to Congress of the proposed contract and the proposed cancellation ceiling at least 30 days before the award of the contract.

(2) COSTS AND SAVINGS.—An energy savings performance contract shall require the contractor to incur the costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(3) OTHER TERMS AND CONDITIONS.—An energy savings performance contract shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that either the Government or the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(c) LIMITATION ON ANNUAL CONTRACT PAYMENTS.—Aggregate annual payments by the Secretary to a contractor for energy, operations, and maintenance under an energy savings performance contract may not exceed the amount that the Department of Defense would have paid for energy, operations, and maintenance in the absence of the contract (as estimated through the procedures developed pursuant to this section) during term of the contract. The contract shall provide for a guarantee of savings to the Department, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(d) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall issue final rules to establish the procedures and methods for use by the Department of Defense to select, monitor, and terminate energy savings performance contracts in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(e) IMPLEMENTATION PROCEDURES AND METHODS.—The procedures and methods established by rule under subsection (d) shall—

(1) provide for the calculation of energy savings based on sound engineering and financial practices;

(2) allow the Secretary to request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information from firms engaged in providing energy savings services;

(3) allow the Secretary to presume that a contractor meets the requirements of paragraph (2) if the contractor either—

(A) has carried out contracts with a value of at least $1,000,000,000 with the Federal Government over the previous 10 years; or

(B) is listed by a Federal agency pursuant to section 801(b)(2) of the National Energy Policy Act (42 U.S.C. 8287(b)(2));

(4) allow the Secretary to, from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(5) allow the Secretary to select firms from such list to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(6) allow the Secretary to select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(7) allow the Secretary to permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that the Department of Defense has determined is qualified to provide such services under the procedures established pursuant to subsection (d) and require facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals;

(8) allow the Secretary to enter into an energy savings performance contract with a firm qualified under paragraph (7), consistent with the procedures and methods established pursuant to subsection (d); and

(9) allow a firm not designated as qualified to provide energy savings services under paragraph (4) to request a review of such decision to be conducted in accordance with procedures, substantially equivalent to procedures established under section 759(f) of title 40, United States Code, to be developed by the board of contract appeals of the General Services Administration.

(f) TRANSITION RULE FOR CERTAIN ENERGY SAVINGS PERFORMANCE CONTRACTS.—In the case of any energy savings performance contract entered into by the Secretary, or the Secretary of Energy, before October 1, 2003, for services to be provided at Department of Defense facilities, the Secretary may issue

additional task orders pursuant to such contract and may make whatever contract modifications the parties to such contract agree are necessary to conform to the provisions of this section.

(g) PILOT PROGRAM FOR NONBUILDING APPLICATIONS.—

(1) IN GENERAL.—The Secretary may carry out a pilot program to enter into up to 10 energy savings performance contracts for the purpose of achieving energy savings, secondary savings, and benefits incidental to those purposes, in nonbuilding applications.

(2) SELECTION.—The Secretary shall select the contract projects to demonstrate the applicability and benefits of energy savings performance contracting to a range of nonbuilding applications.

(3) REPORT.—Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the progress and results of the pilot program. The report shall include a description of projects undertaken; the energy and cost savings, secondary savings and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized.

(h) DEFINITIONS.—In this section:

(1) ENERGY SAVINGS.—The term ''energy savings'' means a reduction in the cost of energy, from a base cost established through a methodology set forth in the energy savings performance contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, increased capacity or payload, or technical services; or

(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

(2) ENERGY SAVINGS PERFORMANCE CONTRACT.—The term ''energy savings performance contract'' means a contract that provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building, as defined in section 13(l) of the Public Buildings Act of 1959 (40 U.S.C. 612(l)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Accountability Act of 1959 (40 U.S.C. 606).

(3) NONBUILDING APPLICATION.—The term ''nonbuilding application'' means—

(A) any class of vehicles, devices, or equipment that is transportable under its own power by land, sea, or air that consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(B) any Federally owned equipment used to generate electricity or transport water.

(4) SECONDARY SAVINGS.—The term ''secondary savings'' means additional energy or cost savings that are a direct consequence of the energy savings that result from the energy efficiency improvements that were financed and implemented pursuant to the energy savings performance contract. Such secondary savings may include energy and cost savings that result from a reduction in the need for fuel delivery and logistical support, personnel cost savings and environmental benefits. In the case of electric generation equipment, secondary savings may include the benefits of increased efficiency in the production of electricity, including revenue received by the Federal Government from the sale of electricity so produced.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Defense.

SA 3231. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

At end of subtitle B of title III, add the following:

SEC. 313. ROTARY WING NIGHT VISION GOGGLE TRAINING.

(a) INCREASE IN AMOUNTS FOR PROCUREMENT, NAVY.—(1) The amount authorized to be appropriated by section 102(a)(1) for aircraft procurement, Navy, is hereby increased by $3,850,000.

(2) The amount authorized to be appropriated by section 102(a)(4) for other procurement, Navy, is hereby increased by $150,000.

(b) AVAILABILITY OF AMOUNTS FOR ROTARY WING NIGHT VISION GOGGLE TRAINING.—(1) Of the amount authorized to be appropriated by section 102(a)(1) for aircraft procurement, Navy, as increased by subsection (a)(1), $3,850,000 shall be available for the development of rotary wing night vision goggle (NVG) training.

(2) Of the amount authorized to be appropriated by section 102(a)(4) for other procurement, Navy, as increased by subsection (a)(2), $150,000 shall be available for the development of rotary wing night vision goggle training.

(c) OFFSET.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, the amount available in Program Element PE 0305199D8Z for horizontal fusion is hereby reduced by $4,000,000.

SA 3232. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 280, after line 22, insert the following:

SEC. 1068. SENSE OF CONGRESS ON CONTRIBUTIONS OF AFRICAN AMERICANS TO THE ARMED FORCES.

(a) FINDINGS.—Congress makes the following findings:

(1) From the inception of our Nation, many African Americans have given their lives in service to this country in order that Americans could enjoy freedom and prosperity.

(2) Nowhere is this sacrifice more apparent than in the history of the Armed Forces of the United States, and in the current fight against the threat of terrorism within the United States and abroad.

(3) It is important to recognize the extraordinary contributions of African American soldiers enlisted in the Armed Forces during the era of segregation, when these brave soldiers fought valiantly to ensure freedom and democracy for Americans that they were not, in many instances, able to enjoy.

(4) In September 1945, Secretary of War Robert P. Patterson appointed a board of 3 general officers, which became known as the Gillem Board, to investigate the policy of the United States Army with respect to African Americans and to prepare a new policy that would provide for the efficient use of African Americans in the Army.

(5) The April 1946 Gillem Board report, titled ''Utilization of Negro Manpower in the Postwar Army Policy,'' concluded that the future policy of the Army should be to ''eliminate, at the earliest practicable moment, any special consideration based on race.''

(6) On October 29, 1947, the President's Committee on Civil Rights issued a landmark report titled ''To Secure These Rights'', which condemned segregation, in particular segregation in the Armed Forces. The report recommended legislation and administrative action ''to end immediately all discrimination and segregation based on race, color, creed or national origin in . . . all branches of the Armed Services.''

(7) On July 26, 1948, President Truman signed Executive Order 9981, which stated that ''there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin.'' The order also established the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which included two African American members among its initial members.

(8) On April 1, 1949, Secretary of Defense Louis Johnson issued a directive to the Secretaries of the Army, Navy, and Air Force that stated that it was the policy of the Department of Defense that there should be equality of treatment and opportunity for all in the armed services, and that ''qualified Negro personnel shall be assigned to fill any type of position . . . without regard to race.''

(9) On May 11, 1949, Secretary of Defense Louis Johnson approved the integration plans of the Air Force, but rejected those of the Army and the Navy.

(10) On June 7, 1949, Secretary of Defense Louis Johnson accepted a revised Navy integration plan.

(11) On March 13, 1950, the Army agreed to abolish its 10 percent recruitment quota for African Americans.

(12) On March 18, 1951, The Department of Defense announced that all basic training within the United States had been integrated.

(13) In October 1953, the Army announced that 95 percent of African American soldiers in the Army were serving in integrated units.

(b) SENSE OF CONGRESS.—It is the sense of Congress—

(1) to apologize for the racial segregation that was enforced by the United States Government upon African American soldiers who defended the United States prior to the desegregation of the Armed Forces;

(2) that the United States has been richly blessed by the contributions and sacrifices of African Americans;

(3) that the African Americans who served in the Armed Forces of the United States were heroes who were willing to see beyond their own oppression and envision a future society that would be fully inclusive of all citizens, regardless of their race; and

(4) because of the sacrifices of these heroes, our Nation has prospered and grown into a symbol of freedom emulated by countries around the world.

(c) CLAIMS NOT AUTHORIZED.—This section shall not be construed to authorize any claim against the United States and shall not be construed as a settlement of any claim against the United States.

SA 3233. Mr. LOTT (for himself and Mr. GRAHAM of South Carolina) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 35, between lines 6 and 7, insert the following:

SEC. 232. SENSE OF THE SENATE REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.

(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $10,300,000 for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) that the Senate—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) is concerned that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further reduce the cost of designing, building, and repairing ships.

SA 3234. Mr. NELSON of Florida (for himself, Mrs. DOLE, Mr. CORZINE, Mr. NELSON of Nebraska, Mr. LEAHY, Mrs. MURRAY, and Mr. GRAHAM of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. FAMILY READINESS PROGRAM OF THE NATIONAL GUARD.

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby increased by $10,000,000 for the Family Readiness Program of the National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby reduced by $10,000,000 due to excessive unobligated balances.

SA 3235. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 280, after line 22, insert the following:

SEC. ___. BROADCAST DECENCY ENFORCEMENT ACT OF 2004.

(a) SHORT TITLE.—This section may be cited as the ''Broadcast Decency Enforcement Act of 2004''.

(b) INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCASTS.—Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) Notwithstanding subparagraph (A), if the violator is—

''(i)(I) a broadcast station licensee or permittee; or

''(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

''(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language, the amount of any forfeiture penalty determined under this subsection shall not exceed $275,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act.''; and

(3) in subparagraph (D), as redesignated by paragraph (1), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (C)''.

SA 3236. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 131, between lines 17 and 18, insert the following:

SEC. 653. ACCEPTANCE OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE THE AIR OR SURFACE TRAVEL OF CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.

Section 2608 of title 10, United States Code, is amended—

(1) by redesignating subsections (g) through (k) as subsections (h) through (l), respectively; and

(2) by inserting after subsection (f) the following new subsection:

''(g) OPERATION HERO MILES.—(1) The Secretary of Defense may use the authority of subsection (a) to accept the donation of frequent traveler miles, credits, and tickets for air or surface transportation issued by any air carrier or surface carrier that serves the public and that consents to such donation, and under such terms and conditions as the air or surface carrier may specify. The Secretary shall designate a single office in the Department of Defense to carry out this subsection, including the establishment of such rules and procedures as may be necessary to facilitate the acceptance of such frequent traveler miles, credits, and tickets.

''(2) Frequent traveler miles, credits, and tickets accepted under this subsection shall be used only in accordance with the rules established by the air carrier or surface carrier that is the source of the miles, credits, or tickets and shall be used only for the following purposes:

''(A) To facilitate the travel of a member of the armed forces who—

''(i) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

''(ii) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member.

''(B) In the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such deployment, to facilitate the travel of family members of the member to be reunited with the member.

''(3) For the use of miles, credits, or tickets under paragraph (2)(B) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

''(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

''(B) the number of family members who may travel; and

''(C) the number of trips that family members may take.

''(4) Notwithstanding paragraph (2), the Secretary of Defense may, in an exceptional case, authorize a person not described in subparagraph (B) of that paragraph to use frequent traveler miles, credits, or a ticket accepted under this subsection to visit a member of the armed forces described in such subparagraph if that person has a notably close relationship with the member. The frequent traveler miles, credits, or ticket may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the air carrier or surface carrier that is the source of the miles, credits, or ticket.

''(5) The Secretary of Defense shall encourage air carriers and surface carriers to participate in, and to facilitate through minimization of restrictions and otherwise, the donation, acceptance, and use of frequent traveler miles, credits, and tickets under this section.

''(6) The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

''(A) to promote the donation of frequent traveler miles, credits, and tickets under paragraph (1), except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

''(B) to assist in administering the collection, distribution, and use of donated frequent traveler miles, credits, and tickets.

''(7) Members of the armed forces, family members, and other persons who receive air or surface transportation using frequent traveler miles, credits, or tickets donated under this subsection are deemed to recognize no income from such use. Donors of frequent traveler miles, credits, or tickets under this subsection are deemed to obtain no tax benefit from such donation.

''(8) In this subsection, the term 'family member' has the meaning given that term in section 411h(b)(1) of title 37.''.

SA 3237. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, between lines 9 and 10, insert the following:

SEC. 543. REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE WITH RESPECT TO SERVICE IN KOREA AFTER JULY 28, 1953.

(a) STANDARDIZATION OF REQUIREMENTS WITH OTHER GEOGRAPHIC AREAS.—(1) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 3757. Korea defense service: Combat Infantryman Badge; Combat Medical Badge

''The Secretary of the Army shall provide that, with respect to service in the Republic of Korea after July 28, 1953, eligibility of a member of the Army for the Combat Infantryman Badge or the Combat Medical Badge shall be met under criteria and eligibility requirements that, as nearly as practicable, are identical to those applicable, at the time of such service in the Republic of Korea, to service elsewhere without regard to specific location or special circumstances. In particular, such eligibility shall be established—

''(1) without any requirement for service by the member in an area designated as a 'hostile fire area' (or by any similar designation) or that the member have been authorized hostile fire pay;

''(2) without any requirement for a minimum number of instances (in excess of one) in which the member was engaged with the enemy in active ground combat involving an exchange of small arms fire; and

''(3) without any requirement for personal recommendation or approval by commanders in the member's chain of command other than is generally applicable for service at locations outside the Republic of Korea.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''3757. Korea defense service: Combat Infantryman Badge; Combat Medical Badge.''.

(b) APPLICABILITY TO SERVICE BEFORE DATE OF ENACTMENT.—The Secretary of the Army shall establish procedures to provide for the implementation of section 3757 of title 10, United States Code, as added by subsection (a), with respect to service in the Republic of Korea during the period between July 28, 1953, and the date of the enactment of this Act. Such procedures shall include a requirement for submission of an application for award of a badge under that section with respect to service before the date of the enactment of this Act and the furnishing of such information as the Secretary may specify.

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 3037 of this title, the General Counsel''.

(2)(A) Section 3037 of such title is amended to read as follows:

''§ 3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties

''(a) POSITION OF JUDGE ADVOCATE GENERAL.—There is a Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Judge Advocate General's Corps. The term of office is four years, but may be sooner terminated or extended by the President. The Judge Advocate General, while so serving, has the grade of lieutenant general.

''(b) APPOINTMENT.—The Judge Advocate General of the Army shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

''(c) DUTIES.—The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Army, the Chief of Staff of the Army, and the Army Staff, and of all officers and agencies of the Department of the Army;

''(2) shall direct and supervise the members of the Judge Advocate General's Corps and civilian attorneys employed by the Department of the Army (other than those assigned or detailed to the Office of the General Counsel of the Army) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Army;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Army.

''(d) POSITION OF ASSISTANT JUDGE ADVOCATE GENERAL.—(1) There is an Assistant Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Army who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Assistant Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

''(2) When there is a vacancy in the office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Assistant Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

''(3) When paragraph (2) cannot be complied with because of the absence or disability of the Assistant Judge Advocate General, the heads of the major divisions of the Office of the Judge Advocate General, in the order directed by the Secretary of the Army, shall perform the duties of the Judge Advocate General, unless otherwise directed by the President.

''(e) APPOINTMENTS RECOMMENDED BY SELECTION BOARDS.—Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.''.

(B) The item relating to such section in the table of sections at the beginning of chapter 305 of such title is amended to read as follows:

''3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties.''.

(b) DEPARTMENT OF THE NAVY.—(1) Section 5019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 5148 of this title, the General Counsel''.

(2) Section 5148 of such title is amended—

(A) in subsection (b), by striking the fourth sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.''; and

(B) in subsection (d)—

(i) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(ii) by inserting after paragraph (1) the following new paragraph (2):

''(2) direct and supervise the members of the Judge Advocate General's Corps in the performance of their duties;''.

(c) DEPARTMENT OF THE AIR FORCE.—(1) Section 8019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 8037 of this title, the General Counsel''.

(2) Section 8037 of such title is amended—

(A) in subsection (a), by striking the third sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of lieutenant general.''; and

(B) in subsection (c)—

(i) by striking ''General shall,'' in the matter preceding paragraph (1) and inserting ''General,'';

(ii) by redesignating paragraphs (1) and (2) as paragraphs (4) and (5), respectively, and, in each such paragraph, by inserting ''shall'' before the first word; and

(iii) by inserting after paragraph (1) the following new paragraphs:

''(1) is the legal adviser of the Secretary of the Air Force, the Chief of Staff of the Air Force, and the Air Staff, and of all officers and agencies of the Department of the Air Force;

''(2) shall direct and supervise the members of the Air Force designated as judge advocates and civilian attorneys employed by the Department of the Air Force (other than those assigned or detailed to the Office of the General Counsel of the Air Force) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Air Force;''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING HOUSING AND URBAN AFFAIRS

Mr. ALLARD. 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, May 20, 2004, at 10 a.m. to conduct a hearing on ''Oversight of the Extended Custodial Inventory Program.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, May 20, 2004, at 10:15 a.m. on spam.

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

COMMITTEE ON FINANCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on May 20, 2004; to consider favorably reporting the nominations of John O. Colvin, to be Judge, U.S. Tax Court, renomination for a second term; Stuart A. Levey, to be Under Secretary of the Treasury for Enforcement and Juan C. Zarate, to be Assistant Secretary of the Treasury, Terrorist Financing and Financial Crimes.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing entitled ''Prescription Drug Reimportation'' during the session of the Senate on Thursday, May 20, 2004, at 10:00 a.m. in SD–430.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, May 20, 2004, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 2382, the Native American Connectivity Act.

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

COMMITTEE ON THE JUDICIARY

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, May 20, 2004, at 10:30 a.m. in Dirksen Senate Building, room 226.

I. Nominations

Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; Jonathan W. Dudas to be Under Secretary of Commerce for Intellectual Property and Director of the United states Patent and Trademark Office

II. Legislation

S. 1735, Gang Prevention and Effective Deterrence Act of 2003 [Hatch, Feinstein, Grassley, Graham, Chambliss, Cornyn, Schumer, Biden];

S. 1933, Enhancing Federal Obscenity Reporting and Copyright Enforcement (ENFORCE) Act of 2003 [Hatch, Feinstein, Cornyn];

S. 1635, A bill to amend the Immigration and Nationality Act to ensure the integrity of the L–1 visa for intracompany transferees [Chambliss];

S. 1129, Unaccompanied Alien Child Protection Act of 2003 [Feinstein, DeWine, Feingold, Kennedy, Leahy, Specter, Edwards, Durbin, Kohl, Schumer];

S. 2013, Satellite Home Viewer Extension Act of 2004 [Hatch, Leahy, DeWine, Kohl];

S. Res. 362, a resolution expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004, in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II. [Graham (FL), Biden, Chambliss, Durbin, Feingold, Grassley, Hatch, Cornyn, DeWine, Edwards, Graham, (SC)]

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

COMMITTEE ON THE JUDICIARY

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Thursday, May 20, 2004 on ''FBI Oversight: Terrorism and Other Topics'' in the Dirksen Senate Office Building, room 226 immediately following the full committee markup scheduled for 10:30 a.m. in Dirksen Senate Office Building, room 226.

Witness List

Panel I: Robert S. Mueller III, Director, Federal Bureau of Investigation, Department of Justice, Washington, DC.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, May 20, 2004, to markup the nomination of Pamela M. Iovino, to be Assistant Secretary of Veterans Affairs for Congressional Affairs.

The meeting will take place in S–216 in the Capitol, immediately following the first roll call vote of the Senate after 12 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 20, 2004 at 2:30 p.m. to hold a closed Business Meeting.

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

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE, AND NUCLEAR SAFETY

Mr. ALLARD. Mr. President. I ask unanimous consent that the subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to meet on Thursday, May 20th at 10:30 a.m. rather than 9:30 a.m. to conduct an oversight hearing on the Nuclear Regulatory Commission.

The meeting will be held in SD–406.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, May 20 at 2:30 p.m.

The purpose of the hearing is to receive testimony on the following bills: S. 1672, to expand the Timucuan Ecological and Historic Preserve, Florida; S. 1789 and H.R. 1616, to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the city of Atlanta, GA. and for other purposes; S. 1808, to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities; S. 2167, to establish the Lewis and Clark National Historical Park in the states of Washington and Oregon, and for other purposes; and S. 2173, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

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

ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION ACT

On Wednesday, May 19, 2004, the Senate passed S. 213, as follows:

S. 213

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 ''Albuquerque Biological Park Title Clarification Act''.

SEC. 2. PURPOSE.

The purpose of this Act is to direct the Secretary of the Interior to issue a quitclaim

deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City's title to these lands.

SEC. 3. DEFINITIONS.

In this Act:

(1) CITY.—The term ''City'' means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms ''Middle Rio Grande Conservancy District'' and ''MRGCD'' mean a political subdivision of the State of New Mexico, created in 1925 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term ''Middle Rio Grande Project'' means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1175) and the Flood Control Act of 1950 (Public Law 81–516; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term ''San Gabriel Park'' means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term ''Tingley Beach'' means the tract of land containing 25.2005 acres, more or less, situated within Section 13 and Section 24, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 4. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) TIMING.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) NO ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 5. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 4, nothing in this Act shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) ONGOING LITIGATION.—Nothing contained in this Act shall be construed or utilized to affect or otherwise interfere with any position set forth by any party in the lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99–1320 JP/RLP–ACE, entitled Rio Grande Silvery Minnow v. John W. Keys, III, concerning the right, title, or interest in and to any property associated with the Middle Rio Grande Project.

HAWAII WATER RESOURCES ACT OF 2004

On Wednesday, May 19, 2004, the Senate passed S. 960, as follows:

S. 960

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 ''Hawaii Water Resources Act of 2004''.

SEC. 2. HAWAII RECLAMATION PROJECTS.

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.) is amended by adding at the end the following:

''SEC. 1637. HAWAII RECLAMATION PROJECTS.

''(a) AUTHORIZATION.—The Secretary may—

''(1) in cooperation with the Board of Water Supply, City and County of Honolulu, Hawaii, participate in the design, planning, and construction of a project in Kalaeloa, Hawaii, to desalinate and distribute seawater for direct potable use within the service area of the Board;

''(2) in cooperation with the County of Hawaii Department of Environmental Management, Hawaii, participate in the design, planning, and construction of facilities in Kealakehe, Hawaii, for the treatment and distribution of recycled water and for environmental purposes within the County; and

''(3) in cooperation with the County of Maui Wastewater Reclamation Division, Hawaii, participate in the design, planning, and construction of, and acquire land for, facilities in Lahaina, Hawaii, for the distribution of recycled water from the Lahaina Wastewater Reclamation Facility for non-potable uses within the County.

''(b) COST SHARE.—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost of the project.

''(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation and maintenance of a project described in subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. prec. 371) is amended by inserting after the item relating to section 1636 the following:

''Sec. 1637. Hawaii reclamation projects.''.

RECREATIONAL FEE AUTHORITY ACT OF 2004

On Wednesday, May 19, 2004, the Senate passed S. 1107, as follows:

S. 1107

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 ''Recreational Fee Authority Act of 2004''.

SEC. 2. RECREATION FEE AUTHORITY.

(a) IN GENERAL.—Beginning on January 1, 2006, the Secretary of the Interior (''Secretary'') may establish, modify, charge, and collect fees for admission to a unit of the National Park System and the use of National Park Service (''Service'') administered areas, lands, sites, facilities, and services (including reservations) by individuals and/or groups. Fees shall be based on an analysis by the Secretary of—

(1) the benefits and services provided to the visitor;

(2) the cumulative effect of fees;

(3) the comparable fees charged elsewhere and by other public agencies and by nearby private sector operators;

(4) the direct and indirect cost and benefit to the government;

(5) public policy or management objectives served;

(6) economic and administrative feasibility of fee collection; and

(7) other factors or criteria determined by the Secretary.

(b) NUMBER OF FEES.—The Secretary shall establish the minimum number of fees and shall avoid the collection of multiple or layered fees for a wide variety of uses, activities or programs.

(c) ANALYSIS.—The results of the analysis together with the Secretary's determination of appropriate fee levels shall be transmitted to the Congress at least three months prior to publication of such fees in the Federal Register. New fees and any increases or decreases in established fees shall be published in the Federal Register and no new fee or change in the amount of fees shall take place until at least 12 months after the date the notice is published in the Federal Register.

(d) ADDITIONAL AUTHORITIES.—Beginning on January 1, 2006, the Secretary may enter into agreements, including contracts to provide reasonable commissions or reimbursements with any public or private entity for visitor reservation services, fee collection and/or processing services.

(e) ADMINISTRATION.—The Secretary may provide discounted or free admission days or use, may modify the National Park Passport, established pursuant to Public Law 105–391, and shall provide information to the public about the various fee programs and the costs and benefits of each program.

(f) STATE AGENCY ADMISSION AND SPECIAL USE PASSES.—Effective January 1, 2006, and notwithstanding the Federal Grants Cooperative Agreements Act, the Secretary may enter into revenue sharing agreements with State agencies to accept their annual passes and convey the same privileges, terms and conditions as offered under the auspices of the National Park Passport, to State agency annual passes and shall only be accepted for all of the units of the National Park System within the boundaries of the State in which the specific revenue sharing agreement is entered into except where the Secretary has established a fee that includes a unit or units located in more than one State.

SEC. 3. DISTRIBUTION OF RECEIPTS.

Without further appropriation, all receipts collected pursuant to the Act or from sales of the National Park Passport shall be retained by the Secretary and may be expended as follows:

(1) 80 percent of amounts collected at a specific area, site, or project as determined by the Secretary, shall remain available for use at the specific area, site or project, except for those units of the National Park System that participate in an active revenue sharing agreement with a State under Section 2(f) of this Act, not less than 90 percent of amounts collected at a specific area, site, or project shall remain available for use.

(2) The balance of the amounts collected shall remain available for use by the Service on a Service-wide basis as determined by the Secretary.

(3) Monies generated as a result of revenue sharing agreements established pursuant to Section 2(f) may provide for a fee-sharing arrangement. The Service shares of fees shall be distributed equally to all units of the National Park System in the specific States that are parties to the revenue sharing agreement.

(4) Not less than 50 percent of the amounts collected from the sale of the National Park Passport shall remain available for use at the specific area, site, or project at which the fees were collected and the balance of the

receipts shall be distributed in accordance with paragraph 2 of this Section.

SEC. 4. EXPENDITURES.

(a) USE OF FEES AT SPECIFIC AREA, SITE, OR PROJECT.—Amounts available for expenditure at a specific area, site or project shall be accounted for separately and may be used for—

(1) repair, maintenance, facility enhancement, media services and infrastructure including projects and expenses relating to visitor enjoyment, visitor access, environmental compliance, and health and safety;

(2) interpretation, visitor information, visitor service, visitor needs assessments, monitoring, and signs;

(3) habitat enhancement, resource assessment, preservation, protection, and restoration related to recreation use; and

(4) law enforcement relating to public use and recreation.

(b) The Secretary may use not more than fifteen percent of total revenues to administer the recreation fee program including direct operating or capital costs, cost of fee collection, notification of fee requirements, direct infrastructure, fee program management costs, bonding of volunteers, start-up costs, and analysis and reporting on program accomplishments and effects.

SEC. 5. REPORTS.

On January 1, 2009, and every three years thereafter the Secretary shall submit to the Congress a report detailing the status of the Recreation Fee Program conducted in units of the National Park System including an evaluation of the Recreation Fee Program conducted at each unit of the National Park System; a description of projects that were funded, work accomplished, and future projects and programs for funding with fees, and any recommendations for changes in the overall fee system.

BEND PINE NURSERY LAND CONVEYANCE ACT AMENDMENTS

On Wednesday, May 19, 2004, the Senate passed S. 1848, as follows:

S. 1848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF BEND PINE NURSERY LAND CONVEYANCE.

(a) DESIGNATION OF RECIPIENTS AND CONSIDERATION.—Section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106–526; 114 Stat. 2512) is amended—

(1) in subsection (a), by striking paragraph (1) and redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively;

(2) in subsection (e)—

(A) by striking ''this section'' both places it appears and inserting ''subsection (a)'';

(B) in paragraph (1), by striking ''Subject to paragraph (3), the'' and inserting ''The''; and

(C) by striking paragraph (3); and

(3) by adding at the end the following:

''(g) BEND PINE NURSERY CONVEYANCE.—

''(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—Upon receipt of consideration in the amount of $3,503,676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 185 acres and containing the Bend Pine Nursery, as depicted on the site plan map entitled 'Bend Pine Nursery Administrative Site, May 13, 2004'. Subject to paragraph (2), the real property conveyed to the Bend Metro Park and Recreation District shall be used only for public recreation purposes and may be developed for those purposes. If the Secretary determines that the real property subject to this condition is converted, in whole or in part, to a use other than public recreation, the Secretary shall require the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair market value of the property at the time of conversion, less the consideration paid under this paragraph.

''(2) RECONVEYANCE OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described in paragraph (1), the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.''.

(b) CONFORMING AMENDMENT.—Section 4(a) of such Act is amended by striking ''section 3(a)'' and inserting ''section 3''.

TAX ADMINISTRATION GOOD GOVERNMENT ACT

On Wednesday, May 19, 2004, the Senate passed H.R. 1528, as follows:

H.R. 1528

Resolved, That the bill from the House of Representatives (H.R. 1528) entitled ''An Act to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Administration Good Government Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

SEC. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 102. AUTHORIZATION FOR IRS TO ENTER INTO INSTALLMENT AGREEMENTS THAT PROVIDE FOR PARTIAL PAYMENT.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years with the primary purpose of determining whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 103. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 105. AUTHORIZATION FOR IRS TO REQUIRE INCREASED ELECTRONIC FILING OF RETURNS PREPARED BY PAID RETURN PREPARERS.

(a) IN GENERAL.—Section 6011(e) (relating to regulations requiring returns on magnetic media, etc.) is amended—

(1) by striking the second sentence in paragraph (1), and

(2) by striking ''250'' in paragraph (2)(A) and inserting ''5''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 106. THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING REVIEW BY TAXPAYER ADVOCATE SERVICE.

(a) IN GENERAL.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after ''such application,'' the following: ''but only if the date of such decision is at least 7 days after the date of the taxpayer's application''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 107. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 108. EXTENSION OF TIME LIMIT FOR CONTESTING IRS LEVY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking ''9 months'' and inserting ''2 years''.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking ''9 months'' and inserting ''2 years'', and

(2) in paragraph (2) by striking ''9-month'' and inserting ''2-year''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 109. INDIVIDUALS HELD HARMLESS ON IMPROPER LEVY ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

''(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

''(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies and an amount is returned to the individual who is the beneficiary of such plan, the individual may deposit an amount equal to the sum of—

''(A) the amount of money returned by the Secretary on account of such levy, and

''(B) interest paid under subsection (c) on such amount of money,

into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

''(2) TREATMENT AS ROLLOVER.—The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that—

''(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

''(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

''(C) such deposit shall not be taken into account under section 408(d)(3)(B).

''(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

''(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2004.

SEC. 110. AUTHORIZATION FOR FINANCIAL MANAGEMENT SERVICE RETENTION OF TRANSACTION FEES FROM LEVIED AMOUNTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act.

SEC. 111. ELIMINATION OF RESTRICTION ON OFFSETTING REFUNDS FROM FORMER RESIDENTS.

(a) IN GENERAL.—Section 6402(e) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

(b) CLARIFICATION OF DISCLOSURE AUTHORITY.—Section 6103(l)(10) (relating to disclosure of certain information to agencies requesting a reduction under subsection (c), (d), or (e) or section 6402) is amended—

(1) by striking '', (d), or (e)'' each place it appears and inserting ''or (d)'', and

(2) by striking '', (d), OR (e)'' in the heading and inserting ''OR (d)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Processing and Personnel

SEC. 121. INFORMATION REGARDING STATUTE OF LIMITATIONS.

The Secretary of the Treasury or the Secretary's delegate shall—

(1) as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and

(2) for taxable years beginning after December 31, 2004, revise any instructions booklet accompanying a general income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto),

to provide for an explanation of the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds, and the consequences under such section 6511 of the failure to file a return of tax.

SEC. 122. ANNUAL REPORT ON IRS PERFORMANCE MEASURES.

(a) IN GENERAL.—Section 7803(a) (relating to Commissioner of Internal Revenue) is amended by adding at the end the following new paragraph:

''(4) ANNUAL REPORT ON IRS PERFORMANCE MEASURES.—Not later than December 31 of each calendar year, the Commissioner shall report to Congress and the Oversight Board on performance goals and projections for the 5-fiscal-year period beginning with the fiscal year ending in such calendar year against which to measure the performance of the Internal Revenue Service in the areas of the public rating of the Internal Revenue Service, customer service, compliance, and management initiatives. The report shall include the long-term performance goal for each measurement and a brief narrative explaining how the Commissioner plans to meet each goal. For each performance goal, the report shall include comparisons between the projected performance level and actual performance level. For each performance measurement, the report shall include a volume projection for such period. If the Internal Revenue Service fails to achieve one of its goals, the report shall explain why. The report shall also include data and a narrative regarding the actual and projected level of the workload and resources of the Internal Revenue Service for such 5-year period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for fiscal year 2004 and thereafter.

SEC. 123. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Paragraph (5) of section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary shall disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 124. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO NON-501(c)(3) TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after ''509(a))'' the following: ''or as a private operating foundation (as defined in section 4942(j)(3))''; and

(2) by amending subparagraph (C) to read as follows:

''(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) or 501(d) which is exempt from tax under section 501(a), or''.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking ''United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia'' and inserting the following: ''United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2004.

SEC. 125. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ''(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

SEC. 126. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF IRS EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL.—Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

''SEC. 7804A. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

''(a) IN GENERAL.—Subject to subsection (c), the Commissioner shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

''(b) ACTS OR OMISSIONS.—The acts or omissions described under this subsection are—

''(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets,

''(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

''(3) with respect to a taxpayer or taxpayer representative, the violation of—

''(A) any right under the Constitution of the United States, or

''(B) any civil right established under—

''(i) title VI or VII of the Civil Rights Act of 1964,

''(ii) title IX of the Education Amendments of 1972,

''(iii) the Age Discrimination in Employment Act of 1967,

''(iv) the Age Discrimination Act of 1975,

''(v) section 501 or 504 of the Rehabilitation Act of 1973, or

''(vi) title I of the Americans with Disabilities Act of 1990,

''(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative,

''(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery,

''(6) violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative,

''(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry,

''(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect,

''(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect, and

''(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

''(c) DETERMINATIONS OF COMMISSIONER.—

''(1) IN GENERAL.—The Commissioner may take a personnel action other than termination for an act or omission described under subsection (b).

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in the Commissioner's sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

''(3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding.

''(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

''Sec. 7804A. Termination of employment for misconduct.''.

(c) REPEAL OF SUPERSEDED SECTION.—Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 127. EXPANSION OF IRS OVERSIGHT BOARD AUTHORITY.

(a) APPROVAL WITH RESPECT TO SENIOR EXECUTIVES.—Section 7802(d)(3)(B) (relating to management) is amended by inserting ''and approve'' after ''review''.

(b) REPORTS.—

(1) BUDGET REQUEST.—Section 7802(d) (relating to specific responsibilities) is amended—

(A) by inserting ''with detailed analysis'' after ''budget request'' in paragraph (4)(B), and

(B) by inserting ''without any additional review or comment from the Commissioner, the Secretary, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget'' before ''to the President'' in the last sentence thereof.

(2) DATE OF SUBMISSION OF ANNUAL REPORT.—Section 7802(f)(3)(A) (relating to annual reports) is amended by striking ''The Oversight Board shall each year report'' and insert ''Not later than March 1 of each calendar year, the Oversight Board shall report''.

(c) CONTINUITY IN OFFICE.—Section 7802(b)(2) (relating to qualifications and terms) is amended by adding at the end the following new subparagraph:

''(E) CONTINUATION IN OFFICE.—Any member whose term expires shall serve until the earlier of the date on which the member's successor takes office or the date which is 1 year after the date of the expiration of the member's term.

(d) ACCESS TO HEALTH BENEFITS.—Section 7802(e) (relating to Board personnel matters) is amended by adding at the end the following new paragraph:

''(5) MEMBERS ACCESS TO FEHBP.—Each member of the Oversight Board who—

''(A) is described in subsection (b)(1)(A), or

''(B) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be considered an employee solely for purposes of chapter 89 of title 5, United States Code.''.

(e) DIRECTOR OF INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—Subsection (e) of section 7802, as amended by subsection (d), is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) DIRECTOR.—The Chairperson of the Oversight Board shall, without regard to the provisions of title 5, United Stated Code, governing appointments in the competitive service, appoint a Director for the Oversight Board. The Director shall be paid at the same rate as the highest-rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 128. IRS OVERSIGHT BOARD APPROVAL OF USE OF CRITICAL PAY AUTHORITY.

(a) IN GENERAL.—Section 7802(d)(3) (relating to management) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ''; and'', and by adding at the end the following new subparagraph:

''(D) review and approve the Commissioner's use of critical pay authority under section 9502 of title 5, United States Code, and streamlined critical pay authority under section 9503 of such title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to personnel hired after the date of the enactment of this Act.

SEC. 129. LOW-INCOME TAXPAYER CLINICS.

(a) GRANTS FOR RETURN PREPARATION CLINICS.—

(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

''SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED RETURN PREPARATION CLINIC.—

''(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—

''(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

''(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

''(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the

clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

''(2) CLINIC.—The term 'clinic' includes—

''(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

''(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

''(c) SPECIAL RULES AND LIMITATIONS.—

''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

''Sec. 7526A. Return preparation clinics for low-income taxpayers.''.

(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.—

(1) INCREASE IN AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

''(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.''.

(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

(i) by inserting ''qualified'' before ''low-income'', and

(ii) by striking the last sentence.

(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

''(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

SEC. 130. TAXPAYER ACCESS TO FINANCIAL INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to award demonstration project grants (including multi-year grants) to eligible entities to provide tax preparation services and assistance in connection with establishing an account in a federally insured depository institution for individuals that currently do not have such an account.

(b) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—An entity is eligible to receive a grant under this section if such an entity is—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

(B) a federally insured depository institution,

(C) an agency of a State or local government,

(D) a community development financial institution,

(E) an Indian tribal organization,

(F) an Alaska Native Corporation,

(G) a Native Hawaiian organization,

(H) a labor organization, or

(I) a partnership comprised of 1 or more of the entities described in the preceding subparagraphs.

(2) DEFINITIONS.—For purposes of this section—

(A) FEDERALLY INSURED DEPOSITORY INSTITUTION.—The term ''federally insured depository institution'' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(B) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term ''community development financial institution'' means any organization that has been certified as such pursuant to section 1805.201 of title 12, Code of Federal Regulations.

(C) ALASKA NATIVE CORPORATION.—The term ''Alaska Native Corporation'' has the same meaning as the term ''Native Corporation'' under section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(D) NATIVE HAWAIIAN ORGANIZATION.—The term ''Native Hawaiian organization'' means any organization that—

(i) serves and represents the interests of Native Hawaiians, and

(ii) has as a primary and stated purpose the provision of services to Native Hawaiians.

(E) LABOR ORGANIZATION.—The term ''labor organization'' means an organization—

(i) in which employees participate,

(ii) which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and

(iii) which is described in section 501(c)(5).

(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(d) LIMITATION ON ADMINISTRATIVE COSTS.—A recipient of a grant under this section may not use more than 6 percent of the total amount of such grant in any fiscal year for the administrative costs of carrying out the programs funded by such grant in such fiscal year.

(e) EVALUATION AND REPORT.—For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary, for the grant program described in this section, $10,000,000, or such additional amounts as deemed necessary, to remain available until expended.

(g) REGULATIONS.—The Secretary is authorized to promulgate regulations to implement and administer the grant program under this section.

SEC. 131. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7529. ENROLLED AGENTS.

''(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

''(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7529. Enrolled agents.''.

(c) PRIOR REGULATIONS.—The authorization to prescribe regulations under the amendments made by this section may not be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other related Federal rule or regulation issued before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 132. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

(a) IN GENERAL.—Section 7803 (relating to Commissioner of Internal Revenue; other officials) is amended by adding at the end the following new subsection:

''(e) DISASTER RESPONSE TEAM.—

''(1) RESPONSE TO DISASTERS.—The Secretary shall—

''(A) establish as a permanent office in the national office of the Internal Revenue Service a disaster response team composed of members, who in addition to their regular responsibilities, shall assist taxpayers in clarifying and resolving Federal tax matters associated with or resulting from any Presidentially declared disaster (as defined in section 1033(h)(3)), and

''(B) respond to requests by such taxpayers for filing extensions and technical guidance expeditiously.

''(2) PERSONNEL OF DISASTER RESPONSE TEAM.—The disaster response team shall be composed of—

''(A) personnel from the Office of the Taxpayer Advocate, and

''(B) personnel from the national office of the Internal Revenue Service with expertise in individual, corporate, and small business tax matters.

''(3) COORDINATION WITH FEMA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

''(4) TOLL-FREE TELEPHONE NUMBER.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

''(5) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).''.

(b) FEMA.—The Director of the Federal Emergency Management Agency shall work in coordination with the disaster response team established under section 7803(e) of the Internal Revenue Code of 1986 to provide timely assistance to disaster victims described in such section, including—

(1) informing the disaster response team regarding any tax-related problems or issues arising in connection with the disaster,

(2) providing the toll-free telephone number established and maintained by the Internal Revenue Service for the disaster victims in all materials provided to such victims, and

(3) providing the information described in section 7803(e)(5) of such Code on the Internet webpage of the Federal Emergency Management Agency or through a link on such webpage to the Internet webpage site of the Internal Revenue Service described in such section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 133. STUDY OF ACCELERATED TAX REFUNDS.

(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) elect the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 134. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

(a) STUDY.—The Secretary of the Treasury shall study—

(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,

(2) the utility of requiring taxpayers to maintain all records indefinitely,

(3) such requirement given the necessity to upgrade technological storage for outdated records,

(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service, and

(5) proposals regarding taxpayer record-keeping.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 135. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

(1) by striking all matter preceding subclause (I) of clause (ii) and inserting the following:

''(B) ANNUAL REPORT.—

''(i) IN GENERAL.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer of Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—'',

(2) by striking ''clause (ii)'' in clause (iv) and inserting ''clause (i)'', and

(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) ADDITIONAL REPORTS.—Section 7803(c)(2)(C) (relating to other responsibilities) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ''; and'', and by adding at the end the following new clause:

''(v) at the discretion of the National Taxpayer Advocate, report at any time to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on significant issues affecting taxpayer rights.''.

(c) EFFECTIVE DATES.—

(1) ANNUAL REPORTS.—The amendments made by subsection (a) shall apply to reports in calendar year 2005 and thereafter.

(2) ADDITIONAL REPORTS.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 136. IRS FREE FILE PROGRAM.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall require that a taxpayer must provide an affirmative consent before such taxpayer may be solicited with respect to any product or service by an entity participating in the Internal Revenue Service Free File program. Any request for such consent must be prominently displayed and clearly written, in large print, on any material relating to such program.

(b) EFFECTIVE DATE.—This section shall take effect with respect to returns filed after December 31, 2004.

SEC. 137. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.

(a) IN GENERAL.—Paragraph (1) of section 7803(d) (relating to additional duties of the Treasury Inspector General for Tax Administration) is amended—

(1) by striking ''ANNUAL'' in the heading and inserting ''BIENNIAL'',

(2) by inserting ''every 2 years (beginning in 2004)'' after ''one of the semiannual reports'' in the matter preceding subparagraph (A),

(3) by striking clause (ii) of subparagraph (A),

(4) by redesignating clauses (iii), (iv), and (v) of subparagraph (A) as clauses (ii), (iii), and (iv) of subparagraph (A), respectively,

(5) by striking subparagraph (B),

(6) by striking ''and'' at the end of subparagraph (F),

(7) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and

(8) by striking subparagraph (G) and inserting the following new subparagraphs:

''(F) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources; and

''(G) with respect to allegations of serious employee misconduct—

''(i) a summary of the status of such allegations; and

''(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.''.

(b) CONFORMING AMENDMENTS.—Section 7803(d) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 138. STUDY OF IRS ACCOUNTS RECEIVABLE.

(a) STUDY.—The Secretary of the Treasury shall conduct a study of the provisions of the Internal Revenue Code of 1986, and the application of such provisions, regarding collection procedures to determine if impediments exist to the efficient and timely collection of tax debts. Such study shall include an examination of the accounts receivable inventory of the Internal Revenue Service.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, including the findings of the study described in subsection (a) and such legislative or administrative recommendations as the Secretary deems appropriate to increase the efficient and timely collection of tax debts.

SEC. 139. ELECTRONIC COMMERCE ADVISORY GROUP.

(a) IN GENERAL.—Section 2001(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998 is amended by inserting '', and at least 2 representatives from the consumer advocate community'' after ''industry''.

(b) APPLICATION OF AMENDMENT.—The initial appointments in accordance with the amendment made by this section shall be made not later than the date which is 180 days after the date of the enactment of this Act.

SEC. 140. STUDY ON MODIFICATIONS TO SCHEDULES L AND M–1.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on proposals to modify tax schedules L and M–1 of Form 1120 to require the disclosure of additional information, such as the items described in subsection (b).

(b) ITEMS OF DISCLOSURE.—The items described in this subsection is as follows:

(1) The parent company names and identification numbers for both tax and book purposes.

(2) An asset reconciliation of consolidated book assets on the public financial disclosures with the consolidated tax return.

(3) Worldwide net income from public financial disclosures.

(4) The components of tax expense presently recorded in financial statement tax footnotes.

(5) The reconciliation of the book income of entities included in the consolidated financial statement with book income included in the consolidated tax return.

(6) The adjustment for book income from domestic and foreign entities excluded from financial reporting but included for tax reconciliation.

(7) The book income of United States entities included in the United States consolidated return.

(8) Taxable income due to actual or deemed dividends from foreign subsidiaries.

(9) A reconciliation which should reflect pretax book income of United States consolidated tax group plus taxable deemed or actual foreign repatriations.

(10) The differences in the reporting of income and expense between book and tax reporting, including specific reporting on pension expense, stock options, and the amortization of goodwill.

(11) Other reconciliation items in a consistent manner among all entities.

(c) PUBLIC AVAILABILITY OF SPECIFIED INFORMATION.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission and the Commissioner of Internal Revenue shall each report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on proposals to expand the public availability and clarity of information relating to book and tax differences and Federal tax liability with respect to corporations.

SEC. 141. REGULATION OF FEDERAL INCOME TAX RETURN PREPARERS, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 7530. FEDERAL INCOME TAX RETURN PREPARERS, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS.

''(a) REGISTRATION.—

''(1) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary—

''(A) to require the registration of Federal income tax return preparers, refund anticipation loan providers, and payroll agents with the Secretary or the designee of the Secretary,

''(B) to prohibit the payment of a refund of tax to a Federal income tax return preparer or refund anticipation loan provider that is the result of a tax return which is prepared by such preparer or provider which does not include the preparer's or provider's registration number, and

''(C) to require the posting of a resonable bond by each registered payroll agent.

''(2) NO DISCIPLINARY ACTION.—The regulations under paragraph (1) shall require that an applicant for registration must not have demonstrated any conduct that would warrant disciplinary action under part 10 of title 31, Code of Federal Regulations.

''(3) BURDEN OF REGISTRATION.—In promulgating the regulations under paragraph (1), the Secretary shall minimize the burden and cost on the registrant.

''(b) EXAMINATION.—In promulgating the regulations under subsection (a)—

''(1) IN GENERAL.—The Secretary shall develop a series of examinations designed to test the technical knowledge and competency of each applicant for registration to prepare Federal tax returns, including an examination testing knowledge of individual income tax return preparation, including the earned income tax credit under section 32.

''(2) INITIAL EXAMINATION.—The Secretary shall require that each applicant for registration

pass an initial examination testing the applicant's technical knowledge and competency to prepare individual and business Federal income tax returns.

''(c) RULES OF CONDUCT.—All registrants shall be subject to rules of conduct that are consistent with the rules that govern any federally authorized tax practitioner within the meaning of section 7525(a)(3)(A).

''(d) DISCLOSURE OF INFORMATION.—The Secretary shall provide guidance on the manner and timing of disclosure to taxpayers of information relating to fees and interest rates imposed in connection with loans made to taxpayers by refund anticipation loan providers.

''(e) ANNUAL RENEWAL OF REGISTRATION.—

''(1) IN GENERAL.—The regulations under subsection (a) shall require an annual renewal of registration and shall set forth the manner in which a registered Federal income tax return preparer, refund anticipation loan provider, or payroll agent must renew such registration.

''(2) ANNUAL EXAMINATIONS.—As part of the annual registration, such regulations shall require that each registrant pass an annual refresher examination (including tax law updates).

''(f) FEES.—

''(1) IN GENERAL.—The Secretary may require the payment of reasonable fees for registration and for renewal of registration under the regulations promulgated under subsection (a).

''(2) PURPOSE OF FEES.—Any fees described in paragraph (1) shall be available without fiscal year limitation to the Secretary for the purpose of reimbursement of the costs of administering the requirements of the regulations.

''(g) FEDERAL INCOME TAX RETURN PREPARER.—For purposes of this section—

''(1) IN GENERAL.—The term 'Federal income tax return preparer' means any individual who is an income tax return preparer (within the meaning of section 7701(a)(36)) who prepares not less than 5 returns of tax imposed by subtitle A or claims for refunds of tax imposed by subtitle A per taxable year.

''(2) EXCEPTION.—Such term shall not include a federally authorized tax practitioner (as defined in section 7525(a)(3)(A).

''(h) REFUND ANTICIPATION LOAN PROVIDER.—For purposes of this section, the term 'refund anticipation loan provider' means a person who makes a loan of money or of any other thing of value to a taxpayer in connection with the taxpayer's anticipated receipt of a Federal tax refund.''.

(b) PROHIBITION.—

(1) IN GENERAL.—Section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons) is amended by adding at the end the following new subsection:

''(h) ACTIONS ON A TAXPAYER'S BEHALF BY A NON-REGISTERED PERSON.—Any person not registered pursuant to the regulations promulgated by the Secretary under section 7530 who—

''(1) prepares a tax return for another taxpayer, or

''(2) provides a loan of money or of any other thing of value to a taxpayer in connection with the taxpayer's anticipated receipt of a Federal tax refund,

shall be subject to a $500 penalty for each incident of noncompliance.''.

(2) USE OF PENALTIES.—There is authorized to be appropriated and is appropriated to the Secretary of the Treasury for each fiscal year for the administration of the requirements of the regulations promulgated under section 7530 of the Internal Revenue Code of 1986 an amount equal to the penalties imposed under section 6695(h) of such Code for the preceding fiscal year.

(c) COORDINATION WITH SECTION 6060(a).—The Secretary of the Treasury shall coordinate the registration required under the regulations promulgated under section 7530 of the Internal Revenue Code of 1986 with the return requirements of section 6060 of such Code.

(d) PUBLIC AWARENESS CAMPAIGN.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a public information and consumer education campaign, utilizing paid advertising, to inform the public of the requirements that Federal income tax return preparers (as defined in section 7530(g) of the Internal Revenue Code of 1986) must sign the return prepared for a fee and display notice of their registration under the regulations promulgated under section 7530 of such Code.

(2) PUBLIC LIST.—The Secretary of the Treasury shall maintain a public list (in print and electronic media, including Internet-based) of Federal income tax return preparers (as so defined) who are so registered and whose registration has been revoked.

(3) NOTIFICATION.—The Secretary of the Treasury shall notify any taxpayer if such taxpayer's return was prepared by such an unregistered Federal income tax return preparer .

(e) ADDITIONAL FUNDS AVAILABLE FOR COMPLIANCE ACTIVITIES.—The Secretary of the Treasury may use any specifically appropriated funds for earned income tax credit compliance to improve and expand enforcement of Federal income tax preparers under the regulations promulgated under section 7530 of the Internal Revenue Code of 1986.

(f) CLERICAL AMENDMENT.—The table of sections for chapter 77, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 7530. Federal income tax return preparers and refund anticipation loan providers.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 142. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service's determinations with respect to offers which raise equitable, public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability,

(3) to provide recommendations as to whether the Internal Revenue Service's evaluation of offers-in-compromise should include—

(A) the taxpayer's compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax,

(C) wrongful acts by a third party which gave rise to the liability, and

(D) whether the taxpayer has made payments on the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2005) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (i) of section 7803(c)(2)(B) (relating to annual reports), as amended by this Act, is amended by striking ''and'' at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

''(XI) include a list of the factors taxpayers have raised to support their claims for offers-in-compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed, the period during which review of such offers have remained pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2005 and thereafter.

Subtitle C—Other Provisions

SEC. 151. PENALTY FOR FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 152. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RULES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking ''(C), or (F)'' in subparagraph (E) and inserting ''or (C)''.

(b) FULL EXCEPTION.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking ''made by a lender to a qualified continuing care facility pursuant to a continuing care contract'' in paragraph (1) and inserting ''owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and'',

(2) by striking ''increased personal care services or'' in paragraph (3)(C),

(3) by adding at the end of paragraph (3) the following new flush sentence:

''The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual's spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.'',

(4) by inserting ''independent living unit'' after ''all of the'' in paragraph (4)(A)(ii),

(5) by striking paragraphs (2) and (5),

(6) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(7) by striking ''CERTAIN'' in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 153. PUBLIC SUPPORT BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by striking ''and'' at the end of subparagraph (C) of paragraph (6), by striking the period at the end of subparagraph (B) of paragraph (7) and inserting ''; and'', and by adding at the end the following new paragraph:

''(8) for purposes of—

''(A) determining support of an organization described in section 170(b)(1)(A)(vi), and

''(B) determining whether an organization is described in paragraph (1) or (2) of section 509(a) for purposes of section 509(a)(3).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) support received before, on, or after the date of the enactment of this Act, and

(2) the determination of the status of any organization with respect to any taxable year beginning after such date of enactment.

SEC. 154. PAYROLL AGENTS SUBJECT TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.

(a) IN GENERAL.—Section 6672(a) is amended by inserting '', including any payroll agent,'' after ''Any person''.

(b) PENALTY NOT SUBJECT TO DISCHARGE IN BANKRUPTCY.—Section 6672(a) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of law, no penalty imposed under this section may be discharged in bankruptcy.''.

(c) CONSTRUCTION.—The amendment made by subsection (a) shall not be construed to create any inference with respect to the interpretation of section 6672 of the Internal Revenue Code of 1986 as such section was in effect on the day before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX.

(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking ''$1,000'' and inserting ''$2,000''.

(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended to read as follows:

''(a) ADDITION TO THE TAX.—

''(1) IN GENERAL.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual for a taxable year, there shall be added to the tax under chapters 1 and 2 for the taxable year the amount determined under paragraph (2) for each day of underpayment.

''(2) AMOUNT.—The amount of the addition to tax for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; UNDERPAYMENT RATE.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

''(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

''(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

''(2) DETERMINATION OF UNDERPAYMENT RATE.—

''(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

''(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

''(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

''(3) TERMINATION OF ESTIMATED TAX UNDERPAYMENT.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estimated tax payments made for taxable years beginning after December 31, 2004.

SEC. 202. CORPORATE ESTIMATED TAX.

(a) INCREASE IN SMALL TAX AMOUNT EXCEPTION.—Section 6655(f) (relating to exception where tax is small amount) is amended by striking ''$500'' and inserting ''$1,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 203. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking ''$1,000,000'' in subparagraph (A) and inserting ''the applicable amount'',

(2) by striking ''the $1,000,000 amount specified in subparagraph (A)'' in subparagraph (B)(ii) and inserting ''the applicable amount'',

(3) by redesignating subparagraph (B) as subparagraph (C), and

(4) by inserting after subparagraph (A) the following new subparagraph:

''(B) APPLICABLE AMOUNT.—For purposes of this paragraph, the applicable amount is $1,000,000 increased (but not above $1,500,000) by $50,000 for each taxable year beginning after 2004.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 204. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Section 6404(e)(1) is amended—

(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),

(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and

(3) by striking ''tax described in section 6212(a)'' in subparagraph (B) and inserting ''tax, addition to tax, or penalty imposed by this title''.

(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking ''PENALTY OR ADDITION'' and inserting ''INTEREST, PENALTY, OR ADDITION''; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date which is 1 year after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or the Secretary's delegate on the date which is 1 year after the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EXCEPTION FOR REPORTABLE AND LISTED TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

SEC. 207. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

SEC. 208. FRIVOLOUS TAX RETURNS AND SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 209. EXTENSION OF NOTICE REQUIREMENTS WITH RESPECT TO INTEREST AND PENALTY CALCULATIONS.

Sections 3306(c) and 3308(c) of the Internal Revenue Service Restructuring and Reform Act of 1998 are each amended by inserting ''and during the period beginning on the date of the enactment of the Tax Administration Good Government Act, and ending before July 1, 2006,'' after ''July 1, 2003,''.

SEC. 210. EXPANSION OF INTEREST NETTING.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: ''Solely for purposes of the preceding sentence, section 6611(e) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest accrued after December 31, 2010.

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

''(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act.

SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to special

trial judges) is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

''(5) any proceeding under section 7436(c), and''.

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 303. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 304. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 305. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

''(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

''(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

''(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

''(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

''(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

''(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

''(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

''(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

''(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

''(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

''(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

''(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

''(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

''(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

''(A) include the principles set forth in section 2301(b) of title 5, United States Code;

''(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

''(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based

upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.''.

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''.

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 312. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 313. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 314. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''.

SEC. 315. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 316. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 317. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court

shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''.

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''.

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''***AND MAGISTRATE JUDGES***'' after ''***JUDGES***''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a)(6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by 1/6 of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity

under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''.

(b) CONFORMING AMENDMENT.—The table of section for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 321. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court

shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 322. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

''SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

''(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

''(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

''(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

''(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

''Sec. 7443C. Recall of magistrate judges of the Tax Court.''.

SEC. 323. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

(a) IN GENERAL.—Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking ''or'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', or'', and by inserting after paragraph (5) the following:

''(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking ''in writing'' the first place it appears.

(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting), as amended by this Act, is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), (G), and (H) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

SEC. 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking ''TREASURY.—Returns and return information'' and inserting ''TREASURY.—

''(A) IN GENERAL.—Returns and return information'', and

(2) by adding at the end the following new subparagraph:

''(B) TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative on a basis other than by reason of such relationship.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting ''(other than the taxpayer's TIN)'' after ''Return information''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

''(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

''(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

''(D) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 6103(p)(8) is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after the date of the enactment of this Act.

(2) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to the portion of calendar year 2004 following the date of the enactment of this Act.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended—

(1) by striking ''TAXPAYER.—The Secretary'' and inserting ''TAXPAYER.—

''(1) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new paragraphs:

''(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information with respect to such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in writing, electronically, or orally may be disclosed or used by such person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and

shall not be disclosed or used for any other purpose.

''(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

''(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

''(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

''(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

''(4) CROSS REFERENCE.—

''For provision providing for civil damages for violation of paragraph (2), see section 7431(i).''.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

''(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SUBSECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified in writing, electronically, or orally, shall be treated as a violation of section 6103(a).''.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Secretary of the Treasury considers necessary or appropriate to better achieve the purposes of this section.

(d) SUNSET OF EXISTING CONSENTS.—Notwithstanding any other provision of law, any request for or consent to disclose any return or return information under section 6103(c) of the Internal Revenue Code of 1986 made before the date of the enactment of this Act shall remain in effect until the earlier of the date such request or consent is otherwise terminated or the date which is 3 years after such date of enactment.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after the date which is 3 months after the date of the enactment of this Act.

SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OR INSPECTION.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: ''The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.''.

(b) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

''(j) EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED.—A judgment for damages shall not be awarded under subsection (c) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff.''.

(c) PAYMENT AUTHORITY CLARIFIED.—

(1) IN GENERAL.—Section 7431, as amended by subsection (b), is amended by adding at the end the following new subsection:

''(k) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.''.

(2) ANNUAL REPORTS OF PAYMENTS.—The Secretary of the Treasury shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 7431(k) of the Internal Revenue Code of 1986.

(d) BURDEN OF PROOF FOR GOOD FAITH EXCEPTION RESTS WITH INDIVIDUAL MAKING INSPECTION OR DISCLOSURE.—Section 7431(b) (relating to exceptions) is amended by adding at the end the following new flush sentence:

''In any proceeding involving the issue of the existence of good faith, the burden of proof with respect to such issue shall be on the individual who made the inspection or disclosure.''.

(e) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the willful unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

''(A) administrative investigations,

''(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

''(C) criminal prosecutions.''.

(f) EFFECTIVE DATES.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date which is 180 days after the date of the enactment of this Act.

(2) EXHAUSTION OF REMEDIES AND BURDEN OF PROOF.—The amendments made by subsections (b) and (d) shall apply to inspections and disclosures occurring on and after the date which is 180 days after the date of the enactment of this Act.

(3) PAYMENT AUTHORITY.—The amendment made by subsection (c)(1) shall take effect on the date which is 180 days after the date of the enactment of this Act.

(4) REPORTS.—The amendment made by subsection (e) shall apply to calendar years ending after the date which is 180 days after the date of the enactment of this Act.

SEC. 408. EXPANSION OF DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL.—Section 6103(i)(3)(B)(i) (relating to danger of death or physical injury) is amended by striking ''or State law enforcement agency'' and inserting '', State, or local law enforcement agency''.

(b) CONFORMING AMENDMENTS.—Section 6103(p)(4) is amended—

(1) by striking ''(i)(3)(B)(i) or (7)(A)(ii)'' and inserting ''(i)(7)(A)(ii)'', and

(2) by striking '', (i)(3)(B)(i),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL.—Section 6103(m)(1) (relating to tax refunds) is amended by striking ''taxpayer identity information to the press and other media'' and by inserting ''a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c) ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO CHARITABLE ORGANIZATIONS.—

''(A) SPECIFIC NOTIFICATIONS.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

''(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

''(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

''(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

''(B) ADDITIONAL DISCLOSURES.—Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

''(C) PROCEDURES FOR DISCLOSURE.—Information may be inspected or disclosed under subparagraph (A) or (B) only—

''(i) upon written request by an appropriate State officer, and

''(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(D) DISCLOSURES OTHER THAN BY REQUEST.—The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of Federal or State issues relating to the tax-exempt status of such organization.

''(3) DISCLOSURE WITH RESPECT TO CERTAIN OTHER EXEMPT ORGANIZATIONS.—Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in paragraph (2), (4), (6), (7), (8), (10), or (13) of section 501(c) for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may be inspected only by or disclosed only to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

''(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary

similar to that for tax administration proceedings under section 6103(h)(4).

''(5) NO DISCLOSURE IF IMPAIRMENT.—Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RETURN AND RETURN INFORMATION.—The terms 'return' and 'return information' have the respective meanings given to such terms by section 6103(b).

''(B) APPROPRIATE STATE OFFICER.—The term 'appropriate State officer' means—

''(i) the State attorney general,

''(ii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

''(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6103 is amended—

(A) by inserting ''or any appropriate State officer who has or had access to returns or return information under section 6104(c)'' after ''this section'' in paragraph (2), and

(B) by striking ''or subsection (n)'' in paragraph (3) and inserting ''subsection (n), or section 6104(c)''.

(2) Subparagraph (A) of section 6103(p)(3) is amended by inserting ''and section 6104(c)'' after ''section'' in the first sentence.

(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18) or any appropriate State officer (as defined in section 6104(c))''.

(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ''FOR CHARITABLE ORGANIZATIONS''.

(5) Paragraph (2) of section 7213(a) is amended by inserting ''or under section 6104(c)'' after ''6103''.

(6) Paragraph (2) of section 7213A(a) is amended by inserting ''or 6104(c)'' after ''6103''.

(7) Paragraph (2) of section 7431(a) is amended by inserting ''(including any disclosure in violation of section 6104(c))'' after ''6103''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. TREATMENT OF PUBLIC RECORDS.

(a) IN GENERAL.—Section 6103(b) (relating to definitions) is amended by adding at the end the following new paragraph:

''(12) TREATMENT OF PUBLIC RECORDS.—Returns and return information shall not be subject to subsection (a) if disclosed—

''(A) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

''(B) properly made part of the public record.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 412. EMPLOYEE IDENTITY DISCLOSURES.

(a) IN GENERAL.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) EMPLOYEE IDENTITY DISCLOSURES.—Nothing in this section may be construed to prohibit agents of the Department of the Treasury from identifying themselves, their organizational affiliation, and the nature of an investigation when contacting third parties in writing or in person.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 413. TAXPAYER IDENTIFICATION NUMBER MATCHING.

(a) IN GENERAL.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

''(10) TIN MATCHING.—The Secretary may disclose to any person required to provide a TIN (as defined in section 7701(a)(41)) to the Secretary whether such information matches records maintained by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 414. FORM 8300 DISCLOSURES.

(a) IN GENERAL.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''(15),'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 415. DISCLOSURE TO LAW ENFORCEMENT AGENCIES REGARDING TERRORIST ACTIVITIES.

(a) IN GENERAL.—Section 6103(i)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE V—SIMPLIFICATION

Subtitle A—Uniform Definition of Child

SEC. 501. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 is amended to read as follows:

''SEC. 152. DEPENDENT DEFINED.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'dependent' means—

''(1) a qualifying child, or

''(2) a qualifying relative.

''(b) EXCEPTIONS.—For purposes of this section—

''(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

''(2) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

''(3) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

''(A) IN GENERAL.—The term 'dependent' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

''(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of 'dependent' if—

''(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

''(ii) the taxpayer is a citizen or national of the United States.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

''(C) who meets the age requirements of paragraph (3), and

''(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

''(A) a child of the taxpayer or a descendant of such a child, or

''(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

''(3) AGE REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

''(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

''(B) SPECIAL RULE FOR DISABLED.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

''(4) SPECIAL RULE RELATING TO 2 OR MORE CLAIMING QUALIFYING CHILD.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (e), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

''(i) a parent of the individual, or

''(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

''(B) MORE THAN 1 PARENT CLAIMING QUALIFYING CHILD.—If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

''(i) the parent with whom the child resided for the longest period of time during the taxable year, or

''(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

''(d) QUALIFYING RELATIVE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying relative' means, with respect to any taxpayer for any taxable year, an individual—

''(A) who bears a relationship to the taxpayer described in paragraph (2),

''(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

''(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

''(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

''(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship

to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

''(A) A child or a descendant of a child.

''(B) A brother, sister, stepbrother, or stepsister.

''(C) The father or mother, or an ancestor of either.

''(D) A stepfather or stepmother.

''(E) A son or daughter of a brother or sister of the taxpayer.

''(F) A brother or sister of the father or mother of the taxpayer.

''(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

''(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

''(3) SPECIAL RULE RELATING TO MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

''(A) no one person contributed over one-half of such support,

''(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

''(C) the taxpayer contributed over 10 percent of such support, and

''(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

''(4) SPECIAL RULE RELATING TO INCOME OF HANDICAPPED DEPENDENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

''(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

''(ii) the income arises solely from activities at such workshop which are incident to such medical care.

''(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term 'sheltered workshop' means a school—

''(i) which provides special instruction or training designed to alleviate the disability of the individual, and

''(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

''(5) SPECIAL RULES FOR SUPPORT.—For purposes of this subsection—

''(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

''(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

''(e) SPECIAL RULE FOR DIVORCED PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (c)(4) or (d)(1)(C), if—

''(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

''(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

''(ii) who are separated under a written separation agreement, or

''(iii) who live apart at all times during the last 6 months of the calendar year, and

''(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year,

such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) are met.

''(2) REQUIREMENTS.—For purposes of paragraph (1), the requirements described in this paragraph are met if—

''(A) a decree of divorce or separate maintenance or written separation agreement between the parents applicable to the taxable year beginning in such calendar year provides that—

''(i) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

''(ii) the custodial parent will sign a written declaration (in such manner and form as the Secretary may prescribe) that such parent will not claim such child as a dependent for such taxable year, or

''(B) in the case of such an agreement executed before January 1, 1985, the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of subparagraph (B), amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

''(3) CUSTODIAL PARENT AND NONCUSTODIAL PARENT.—For purposes of this subsection—

''(A) CUSTODIAL PARENT.—The term 'custodial parent' means the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year.

''(B) NONCUSTODIAL PARENT.—The term 'noncustodial parent' means the parent who is not the custodial parent.

''(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENTS.—This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) CHILD DEFINED.—

''(A) IN GENERAL.—The term 'child' means an individual who is—

''(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

''(ii) an eligible foster child of the taxpayer.

''(B) ADOPTED CHILD.—In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

''(C) ELIGIBLE FOSTER CHILD.—For purposes of subparagraph (A)(ii), the term 'eligible foster child' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

''(2) STUDENT DEFINED.—The term 'student' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

''(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

''(3) DETERMINATION OF HOUSEHOLD STATUS.—An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

''(4) BROTHER AND SISTER.—The terms 'brother' and 'sister' include a brother or sister by the half blood.

''(5) SPECIAL SUPPORT TEST IN CASE OF STUDENTS.—For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

''(A) a child of the taxpayer, and

''(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

''(6) TREATMENT OF MISSING CHILDREN.—

''(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

''(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

''(i) the deduction under section 151(c),

''(ii) the credit under section 24 (relating to child tax credit),

''(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

''(iv) the earned income credit under section 32.

''(C) COMPARABLE TREATMENT OF CERTAIN QUALIFYING RELATIVES.—For purposes of this section, a child of the taxpayer—

''(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

''(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

''(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

''(7) CROSS REFERENCES.—

''For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).''.

SEC. 502. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 2(b)(1)(A) is amended to read as follows:

''(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

''(I) is married at the close of the taxpayer's taxable year, and

''(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)(3), or both, or''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Clauses (i) and (ii) of section 2(b)(3)(B) are amended to read as follows:

''(i) subparagraph (H) of section 152(d)(2), or

''(ii) paragraph (3) of section 152(d).''.

SEC. 503. MODIFICATIONS OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Section 21(a)(1) is amended by striking ''In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))'' and inserting ''In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual''.

(b) QUALIFYING INDIVIDUAL.—Paragraph (1) of section 21(b) is amended to read as follows:

''(1) QUALIFYING INDIVIDUAL.—The term 'qualifying individual' means—

''(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

''(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

''(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.''.

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 21(e) is amended to read as follows:

''(1) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.''.

SEC. 504. MODIFICATIONS OF CHILD TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 24(c) is amended to read as follows:

''(1) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.''.

(b) CONFORMING AMENDMENT.—Section 24(c)(2) is amended by striking ''the first sentence of section 152(b)(3)'' and inserting ''subparagraph (A) of section 152(b)(3)''.

SEC. 505. MODIFICATIONS OF EARNED INCOME CREDIT.

(a) QUALIFYING CHILD.—Paragraph (3) of section 32(c) is amended to read as follows:

''(3) QUALIFYING CHILD.—

''(A) IN GENERAL.—The term 'qualifying child' means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

''(B) MARRIED INDIVIDUAL.—The term 'qualifying child' shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

''(C) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

''(D) IDENTIFICATION REQUIREMENTS.—

''(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

''(ii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1) is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

(2) Section 32(c)(4) is amended by striking ''(3)(E)'' and inserting ''(3)(C)''.

(3) Section 32(m) is amended by striking ''subsections (c)(1)(F)'' and inserting ''subsections (c)(1)(E)''.

SEC. 506. MODIFICATIONS OF DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

Subsection (c) of section 151 is amended to read as follows:

''(c) ADDITIONAL EXEMPTION FOR DEPENDENTS.—An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.''.

SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Section 2(a)(1)(B)(i) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(2) Section 21(e)(5) is amended—

(A) by striking ''paragraph (2) or (4) of'' in subparagraph (A), and

(B) by striking ''within the meaning of section 152(e)(1)'' and inserting ''as defined in section 152(e)(3)(A)''.

(3) Section 21(e)(6)(B) is amended by striking ''section 151(c)(3)'' and inserting ''section 152(f)(1)''.

(4) Section 25B(c)(2)(B) is amended by striking ''151(c)(4)'' and inserting ''152(f)(2)''.

(5)(A) Subparagraphs (A) and (B) of section 51(i)(1) are each amended by striking ''paragraphs (1) through (8) of section 152(a)'' both places it appears and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(B) Section 51(i)(1)(C) is amended by striking ''152(a)(9)'' and inserting ''152(d)(2)(H)''.

(6) Section 72(t)(2)(D)(i)(III) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(7) Section 72(t)(7)(A)(iii) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(8) Section 42(i)(3)(D)(ii)(I) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(9) Subsections (b) and (c)(1) of section 105 are amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(10) Section 120(d)(4) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(11) Section 125(e)(1)(D) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(12) Section 129(c)(2) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(13) The first sentence of section 132(h)(2)(B) is amended by striking ''151(c)(3)'' and inserting ''152(f)(1)''.

(14) Section 153 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(15) Section 170(g)(1) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(16) Section 170(g)(3) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(17) Section 213(a) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(18) The second sentence of section 213(d)(11) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(19) Section 220(d)(2)(A) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(20) Section 221(d)(4) is amended by inserting ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

(21) Section 529(e)(2)(B) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(22) Section 2032A(c)(7)(D) is amended by striking ''section 151(c)(4)'' and inserting ''section 152(f)(2)''.

(23) Section 2057(d)(2)(B) is amended by inserting '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

(24) Section 7701(a)(17) is amended by striking ''152(b)(4), 682,'' and inserting ''682''.

(25) Section 7702B(f)(2)(C)(iii) is amended by striking ''paragraphs (1) through (8) of section 152(a)'' and inserting ''subparagraphs (A) through (G) of section 152(d)(2)''.

(26) Section 7703(b)(1) is amended—

(A) by striking ''151(c)(3)'' and inserting ''152(f)(1)'', and

(B) by striking ''paragraph (2) or (4) of''.

SEC. 508. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 2004.

Subtitle B—Simplification Through Elimination of Inoperative Provisions

SEC. 511. SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS.

(a) IN GENERAL.—

(1) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—Paragraph (7) of section 1(f) is amended to read as follows:

''(7) SPECIAL RULE FOR CERTAIN BRACKETS.—In prescribing tables under paragraph (1) which apply to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate bracket begins shall be determined under paragraph (3) by substituting '1993' for '1992'.''.

(2) CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.—Section 29 is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(3) EARNED INCOME CREDIT.—Paragraph (1) of section 32(b) is amended—

(A) by striking subparagraphs (B) and (C), and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—In the case of taxable years beginning after 1995'' and moving the table 2 ems to the left.

(4) GENERAL BUSINESS CREDITS.—Subsection (d) of section 38 is amended by striking paragraph (3).

(5) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—Subsection (d) of section 39 is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

(6) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, clause'' and inserting ''Clause''.

(7) ITEMS OF TAX PREFERENCE; DEPLETION.—Paragraph (1) of section 57(a) is amended by striking ''Effective with respect to taxable years beginning after December 31, 1992, this'' and inserting ''This''.

(8) INTANGIBLE DRILLING COSTS.—

(A) Clause (i) of section 57(a)(2)(E) is amended by striking ''In the case of any taxable year beginning after December 31, 1992, this'' and inserting ''This''.

(B) Clause (ii) of section 57(a)(2)(E) is amended by striking ''(30 percent in the case of taxable years beginning in 1993)''.

(9) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

(A) in subsection (c)(4) by striking ''; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954'', and

(B) in subsection (g)(3) by striking ''January 1, 1954, or'' and '', whichever is later''.

(10) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking ''or (d)''.

(11) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106(c)(1) is amended by striking ''Effective on and after January 1, 1997, gross'' and inserting ''Gross''.

(12) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—

(A) by striking ''(after June 24, 1950)'' in paragraph (2), and

(B) striking ''such zone;'' and all that follows in paragraph (3) and inserting ''such zone.''.

(13) PRINCIPAL RESIDENCE.—Section 121(b)(3) is amended—

(A) by striking subparagraph (B); and

(B) in subparagraph (A) by striking ''(A) IN GENERAL.—'' and moving the text 2 ems to the left.

(14) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking ''after December 31, 1965,''.

(15) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking paragraph (6) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(16) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

(17) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(g) is amended by striking the last sentence.

(18) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking ''For taxable years beginning after December 31, 1980, this'' and inserting ''This''.

(19) HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Paragraph (1) of section 162(l) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer's spouse and dependents.''.

(20) INTEREST.—

(A) Section 163 is amended by striking paragraph (6) of subsection (d) and paragraph (5) (relating to phase-in of limitation) of subsection (h).

(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.

(21) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (k).

(22) AMORTIZABLE BOND PREMIUM.—Subparagraph (B) of section 171(b)(1) is amended to read as follows:

''(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and

''(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period of earlier call date, with reference to the amount payable on earlier call date), and''.

(23) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(A) Section 172 is amended—

(i) by striking subparagraph (D) of subsection (b)(1) and by redesignating subparagraphs (E), (F), (G), and (H) as subparagraphs (D), (E), (F), and (G), respectively,

(ii) by striking ''ending after August 2, 1989'' in subsection (b)(1)(D)(i)(II) (as redesignated by clause (i)),

(iii) by striking ''subparagraph (F)'' in subsection (b)(1)(G) (as redesignated by clause (i)) and inserting ''subparagraph (E)'',

(iv) by striking subsection (g), and

(v) by striking subparagraph (F) of subsection (h)(2).

(B) Section 172(h)(4) is amended by striking ''subsection (b)(1)(E)'' each place it appears and inserting ''subsection (b)(1)(D)''.

(C) Section 172(i)(3) is amended by striking ''subsection (b)(1)(G)'' each place it appears and inserting ''subsection (b)(1)(F)''.

(D) Section 172(j) is amended by striking ''subsection (b)(1)(H)'' each place it appears and inserting ''subsection (b)(1)(G)''.

(E) Section 172, as amended by subparagraphs (A) through (D) of this paragraph, is amended—

(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,

(ii) by striking ''subsection (h)'' each place it appears and inserting ''subsection (g)'', and

(iii) by striking ''subsection (i)'' each place it appears and inserting ''subsection (h)''.

(24) RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

''(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.''.

(25) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking ''beginning after December 31, 1953''.

(26) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

''(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.''.

(27) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

(28) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—

(A) Sections 244 and 247 are hereby repealed and the table of sections for part VIII of subchapter B of chapter 1 is amended by striking the items relating to sections 244 and 247.

(B) Paragraph (5) of section 172(d) is amended to read as follows:

''(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED.—The deductions allowed by section 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).''.

(C) Paragraph (1) of section 243(c) is amended to read as follows:

''(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting '80 percent' for '70 percent'.''.

(D) Section 243(d) is amended by striking paragraph (4).

(E) Section 246 is amended—

(i) by striking '', 244,'' in subsection (a)(1),

(ii) in subsection (b)(1)—

(I) by striking ''sections 243(a)(1), and 244(a),'' the first place it appears and inserting ''section 243(a)(1),'',

(II) by striking ''244(a),'' the second place it appears therein, and

(III) by striking ''subsection (a) or (b) of section 245, and 247,'' and inserting ''and subsection (a) or (b) of section 245,'', and

(iii) by striking '', 244,'' in subsection (c)(1).

(F) Section 246A is amended by striking '', 244,'' both places it appears in subsections (a) and (e).

(G) Sections 263(g)(2)(B)(iii), 277(a), 301(e)(2), 469(e)(4), 512(a)(3)(A), subparagraphs (A), (C), and (D) of section 805(a)(4), 805(b)(5), 812(e)(2)(A), 815(c)(2)(A)(iii), 832(b)(5), 833(b)(3)(E), 1059(b)(2)(B), and 1244(c)(2)(C) are each amended by striking '', 244,'' each place it appears.

(H) Section 805(a)(4)(B) is amended by striking '', 244(a),'' each place it appears.

(I) Section 810(c)(2)(B) is amended by striking ''244 (relating to dividends on certain preferred stock of public utilities),''.

(29) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking ''beginning after December 31, 1953,'' and by striking the last sentence.

(30) BOND REPURCHASE PREMIUM.—Section 249(b)(1) is amended by striking '', in the case of bonds or other evidences of indebtedness issued after February 28, 1913,''.

(31) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking ''(or by reason of section 24(b) of the Internal Revenue Code of 1939)'' in paragraph (1), by striking ''after December 31, 1953,'' in paragraph (2), by striking the second sentence, and by striking ''or by reason of section 118 of the Internal Revenue Code of 1939'' in the last sentence.

(32) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking ''or acquired on or after October 8, 1940,''.

(33) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—

(A) by striking ''after December 31, 1967,'' in subsection (a)(2),

(B) by striking ''after October 9, 1969,'' in subsection (b),

(C) by striking ''after October 9, 1969, and'' in subsection (d)(5), and

(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).

(34) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking ''In the case of taxable years beginning after December 31, 1984, section'' and inserting ''Section''.

(35) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).

(36) FUNDING STANDARDS.—Section 412(m)(4) is amended—

(A) by striking ''the applicable percentage'' in subparagraph (A) and inserting ''25 percent'', and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(37) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—

(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and

(B) by amending paragraph (2) of subsection (c) to read as follows:

''(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).''.

(38) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by striking ''after December 31, 1963,''.

(39) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—

(A) by striking ''any farming syndicate (as defined in subsection (c))'' both places it appears in subsections (a) and (b) and inserting ''any taxpayer to whom subsection (f) applies'', and

(B) by striking subsection (g).

(40) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—

(A) Paragraph (3) of section 465(c) is amended by striking ''In the case of taxable years beginning after December 31, 1978, this'' and inserting ''This''.

(B) Paragraph (2) of section 465(e)(2)(A) is amended by striking ''beginning after December 31, 1978''.

(41) NUCLEAR DECOMMISSIONING COSTS.—Section 468A(e)(2) is amended—

(A) by striking ''at the rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''at a rate of 20 percent'', and

(B) by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(42) PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.—

(A) Section 469 is amended by striking subsection (m).

(B) Subsection (b) of section 58 is amended by adding ''and'' at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(43) ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.—Section 481(b)(3) is amended by striking subparagraph (C).

(44) EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.—Section 501 is amended by striking subsection (q).

(45) REQUIREMENTS FOR EXEMPTION.—

(A) Section 503(a)(1) is amended to read as follows:

''(1) GENERAL RULE.—An organization described in paragraph (17) or (18) of section 501(c) or described in section 401(a) and referred to in section 4975(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.''.

(B) Paragraph (2) of section 503(a) is amended by striking ''described in section 501(c)(17) or (18) or paragraph (a)(1)(B)'' and inserting ''described in paragraph (1)''.

(C) Subsection (c) of section 503 is amended by striking ''described in section 501(c)(17) or (18) or subsection (a)(1)(B)'' and inserting ''described in subsection (a)(1)''.

(46) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT.—Subparagraph (A) of section 691(d)(1) is amended by striking ''after December 31, 1953, and''.

(47) INCOME TAXES OF MEMBERS OF ARMED FORCES ON DEATH.—Section 692(a)(1) is amended by striking ''after June 24, 1950''.

(48) INSURANCE COMPANY TAXABLE INCOME.—

(A) Section 832(e) is amended by striking ''of taxable years beginning after December 31, 1966,''.

(B) Section 832(e)(6) is amended by striking ''In the case of any taxable year beginning after December 31, 1970, the'' and by inserting ''The''.

(49) TAX ON NONRESIDENT ALIEN INDIVIDUALS.—Subparagraph (B) of section 871(a)(1) is amended to read as follows:

''(B) gains described in subsection (b) or (c) of section 631,''.

(50) PROPERTY ON WHICH LESSEE HAS MADE IMPROVEMENTS.—Section 1019 is amended by striking the last sentence.

(51) INVOLUNTARY CONVERSION.—Section 1033 is amended by striking subsection (j) and by redesignating subsection (k) as subsection (j).

(52) PROPERTY ACQUIRED DURING AFFILIATION.—Section 1051 is repealed and the table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1051.

(53) HOLDING PERIOD OF PROPERTY.—

(A) Paragraph (5) of section 1223 is amended by striking ''(or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939)''.

(B) Paragraph (7) of section 1223 is amended by striking the last sentence.

(C) Paragraph (9) of section 1223 is repealed.

(54) PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ''beginning after December 31, 1981''.

(55) SALE OR EXCHANGE OF PATENTS.—Section 1235 is amended—

(A) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively, and

(B) by striking ''(d)'' in subsection (b) and inserting ''(c)''.

(56) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ''after November 19, 1951,''.

(57) SALE OF PATENTS.—Subsection (a) of section 1249 is amended by striking ''after December 31, 1962,''.

(58) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1252(a) is amended by striking ''after December 31, 1969,'' both places it appears.

(59) TREATMENT OF AMOUNTS RECEIVED ON RETIREMENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

''(c) SPECIAL RULE FOR CERTAIN OBLIGATIONS WITH RESPECT TO WHICH ORIGINAL ISSUE DISCOUNT NOT CURRENTLY INCLUDIBLE.—

''(1) IN GENERAL.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

''(A) an amount equal to the original issue discount, or

''(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

''(2) SUBSECTION (a)(2)(A) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

''(3) CROSS REFERENCE.—

''For current inclusion of original issue discount, see section 1272.''.

(60) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1314 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(61) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1362(d)(3) is amended by striking ''unless'' and all that follows and inserting ''unless the corporation was an S corporation for such taxable year.''.

(62) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Subsection (a) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''12.4 percent of the amount of the self-employment income for such taxable year.''.

(63) HOSPITAL INSURANCE.—Subsection (b) of section 1401 is amended by striking ''the following percent'' and all that follows and inserting ''2.9 percent of the amount of the self-employment income for such taxable year.''.

(64) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—Paragraph (3) of section 1402(e) is amended by striking ''whichever of the following dates is later: (A)'' and by striking ''; or (B)'' and all that follows and by inserting a period.

(65) WITHHOLDING OF TAX ON NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1441 and the first sentence of paragraph (5) of section 1441(c) are each amended by striking ''gains subject to tax'' and all that follows through ''October 4, 1966'' and inserting ''and gains subject to tax under section 871(a)(1)(D)''.

(66) AFFILIATED GROUP DEFINED.—Subparagraph (A) of section 1504(a)(3) is amended by striking ''for a taxable year which includes any period after December 31, 1984'' in clause (i) and by striking ''in a taxable year beginning after December 31, 1984'' in clause (ii).

(67) DISALLOWANCE OF THE BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

(A) Subsection (a) of section 1551 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Section 1551(b) is amended—

(i) by striking ''or (2)'' in paragraph (1), and

(ii) by striking ''(a)(3)'' in paragraph (2) and inserting ''(a)(2)''.

(68) DEFINITION OF WAGES.—Section 3121(b) is amended by striking paragraph (17).

(69) CREDITS AGAINST TAX.—

(A) Paragraph (4) of section 3302(f) is amended by striking ''subsection—'' and all that follows through ''(A) IN GENERAL.—'', by striking subparagraph (B), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

(B) Paragraph (5) of section 3302(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (E) as subparagraph (D).

(70) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).

(71) TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Section 4042(b)(2)(A) is amended to read as follows:

''(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon.''.

(72) TRANSPORTATION BY AIR.—Section 4261(e) is amended—

(A) in paragraph (1) by striking subparagraph (C), and

(B) by striking paragraph (5).

(73) TAXES ON FAILURE TO DISTRIBUTE INCOME.—Section 4942 is amended—

(A) by striking subsection (f)(2)(D),

(B) in subsection (g)(2)(A) by striking ''For all taxable years beginning on or after January 1, 1975, subject'' and inserting ''Subject'',

(C) in subsection (g) by striking paragraph (4), and

(D) in subsection (i)(2) by striking ''beginning after December 31, 1969, and''.

(74) TAXES ON TAXABLE EXPENDITURES.—Section 4945(f) is amended by striking ''(excluding therefrom any preceding taxable year which begins before January 1, 1970)''.

(75) RETURNS.—Subsection (a) of section 6039D is amended by striking ''beginning after December 31, 1984,''.

(76) INFORMATION RETURNS.—Subsection (c) of section 6060 is amended by striking ''year'' and all that follows and inserting ''year.''.

(77) ABATEMENTS.—Section 6404(f) is amended by striking paragraph (3).

(78) FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.—Clause (i) of section 6655(g)(4)(A) is amended by striking ''(or the corresponding provisions of prior law)''.

(79) RETIREMENT.—Section 7447(i)(3)(B)(ii) is amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'', and inserting ''at 3 percent per annum''.

(80) ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF JUDGES.—

(A) Paragraph (2) of section 7448(a) is amended by striking ''or under section 1106 of the Internal Revenue Code of 1939'' and by striking ''or pursuant to section 1106(d) of the Internal Revenue Code of 1939''.

(B) Subsection (g) of section 7448 is amended by striking ''or other than pursuant to section 1106 of the Internal Revenue Code of 1939''.

(C) Subsections (g), (j)(1), and (j)(2) of section 7448 are each amended by striking ''at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter'' and inserting ''at 3 percent per annum''.

(81) MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.—Paragraph (4) of section 7518(g) is amended by striking ''any nonqualified withdrawal'' and all that follows through ''shall be determined'' and inserting ''any nonqualified withdrawal shall be determined''.

(82) VALUATION TABLES.—Paragraph (3) of section 7520(c) is amended—

(A) by striking ''Not later than December 31, 1989, the'' and inserting ''The'', and

(B) by striking ''thereafter'' in the last sentence thereof.

(83) ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.—Section 7651 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(84) DEFINITION OF EMPLOYEE.—(A) Section 7701(a)(20) is amended by striking ''chapter 21'' and all that follows and inserting ''chapter 21.''.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

(2) SAVINGS PROVISION.—If—

(A) any provision amended or repealed by subsection (a) applied to—

(i) any transaction occurring before the date of the enactment of this Act,

(ii) any property acquired before such date of enactment, or

(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for tax for periods ending after such date of enactment,

nothing in the amendments made by subsection (a) shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 601. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction, or

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 602. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue

Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 603. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 604. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 605. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.".

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 606. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction, such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 607. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 608. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

"SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.".

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 609. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 610. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 611. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 612. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 613. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO TAX-MOTIVATED TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 614. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

PART II—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 621. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 622. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to the Federal annual tax return of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 623. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

''(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 624. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 625. INCREASE IN CRIMINAL MONETARY PENALTY FOR INDIVIDUALS TO THE AMOUNT OF THE TAX AT ISSUE.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6203(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

SEC. 626. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

PART III—EXTENSION OF IRS USER FEES

SEC. 631. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

PART IV—OTHER REVENUE PROVISIONS

SEC. 641. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

"SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 642. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'''(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'''(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'''(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

The PRESIDING OFFICER. The majority leader.

ADJOURNMENT OF THE TWO HOUSES OVER THE MEMORIAL DAY HOLIDAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H. Con. Res. 432, the adjournment resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 432) providing for the conditional adjournment of the House of Representatives and the conditional recess or adjournment of the Senate.

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

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

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

The concurrent resolution (H. Con. Res. 432) was agreed to, as follows:

H. CON. RES. 432

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, May 20, 2004, or Friday, May 21, 2004, it stand adjourned until 2 p.m. on Tuesday, June 1, 2004, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on Thursday, May 20, 2004, Friday, May 21, 2004, or Saturday, May 22, 2004, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Tuesday, June 1, 2004, or at such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

NATIONAL TRANSPORTATION WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H. Con. Res. 420 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 420) applauding the men and women who keep America moving and recognizing National Transportation Week.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table en bloc, and any statements relating to the resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 420) was agreed to.

The preamble was agreed to.

SUPPORTING MAY 2004 AS NATIONAL BETTER HEARING AND SPEECH MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 366, submitted earlier today by Senator COLEMAN.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 366) supporting May 2004 as National Better Hearing and Speech Month, and commending those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital.

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

Mr. COLEMAN. Mr. President, every day, more than 1.2 million children will struggle to hear their teacher's voice. Every day, more than 26 million adults will miss important pieces of conversations. Every day, more than 10 million older Americans will consider early retirement in the face of hearing loss.

Mr. President, hearing is not an accessory, but a necessity—a necessity to success in school, business, and life.

In recognition of the importance of hearing, I have introduced this resolution.

This resolution recognizes May as ''National Better Hearing and Speech Month,'' and transforms its ideals into action by encouraging all Americans to have their hearing checked regularly and to seek treatment for hearing loss.

Despite the necessity of hearing to success, one third of all newborns leave the hospital without having their hearing tested. As a result, thirty-three babies are born each day with hearing loss, making deafness the most common birth defect in America.

Mr. President, it doesn't have to be like this. Study after study has shown that through regular testing and early treatment, hearing loss can be prevented not only in infants, but in adults as well.

This resolution can take the first step in preventing hearing loss. Early prevention and treatment is the key to preventing future hearing loss, but we must also care for the 28 million Americans currently suffering from deafness.

Today, 95 percent of individuals with hearing loss can be successfully treated with hearing aids. However, only 22 percent of deaf Americans can afford to use this remarkable technology. In other words, over 21 million Americans will be denied the sensation of sound because they cannot afford a remedy. For this reason, I introduced the Hearing Aid Assistance Tax Credit Act or S. 2055.

S. 2055 provides financial assistance for those who need it most, our elderly and young. Under this legislation, minors and seniors can take a tax credit of up to $500, once every 5 years, toward the purchase of any hearing device that is considered a ''qualified hearing aid'' under the Federal Food, Drug, and Cosmetic Act.

Hearing aids are not just portals to sound, but portals to success—success in school, business, and life. With your support 1.2 million children will hear their teacher's voice for the first time as they learn to read and write. With your support, ten million older Americans will be able to hear their grandchildren's voices and continue working despite age-related hearing loss. With your support, we can give millions the gift of sound.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that statements relating to the measure be printed in the RECORD.

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

The resolution (S. Res. 366) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 366

Whereas the National Institute on Deafness and Other Communication Disorders reports that approximately 28,000,000 people in the United States experience hearing loss or have a hearing impairment;

Whereas 1 out of every 3 people in the United States over the age of 65 have hearing loss;

Whereas the overwhelming majority of people in the United States with hearing loss would benefit from the use of a hearing aid and fewer than 7,000,000 people in the United States use a hearing aid;

Whereas 30 percent of people in the United States suffering from hearing loss cite financial constraints as an impediment to hearing aid use;

Whereas hearing loss is among the most common congenital birth defects;

Whereas a delay in diagnosing the hearing loss of a newborn can affect the social, emotional, and academic development of the child;

Whereas the average age at which newborns with hearing loss are diagnosed is between the ages of 12 to 25 months;

Whereas May 2004 is National Better Hearing and Speech Month, providing Federal, State, and local governments, members of the private and nonprofit sectors, hearing and speech professionals, and all people in the United States an opportunity to focus on preventing, mitigating, and treating hearing impairments: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of May 2004 as National Better Hearing and Speech Month;

(2) commends those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; and

(3) encourages all people in the United States to have their hearing checked regularly.

DESIGNATING MAY 2004 AS OLDER AMERICANS MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further action on S. Res. 353 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 353) designating May 2004 as ''Older Americans Month.''

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

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 353) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 353

Whereas today's older Americans are living longer, healthier, and more productive lives than any other time in our history;

Whereas older Americans exemplify the theme of ''Aging Well, Living Well'' by continuing to give their time to our communities, their knowledge to our children, their experience to our workplace, and their wisdom to all of us;

Whereas there are now more than 50,000 people in the United States 100 years old or older;

Whereas more than 47 million Americans are now 60 years old or older;

Whereas the opportunities and challenges that await our Nation require our Nation to continue to commit to the goal of improving the quality of life for all older Americans; and

Whereas it is appropriate for our Nation to continue the tradition of designating the month of May as a time to celebrate the contributions of older Americans and to rededicate its effort to respect and better serve older Americans: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 2004 as ''Older Americans Month''; and

(2) commends the President on the issuance of his proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities that publicly reaffirm our gratitude and respect for older Americans.

HONORING THE LIFE OF MILDRED MCWILLIAMS JEFFREY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 367, submitted earlier today by Senators STABENOW and LEVIN.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 367) honoring the life of Mildred McWilliams ''Millie'' Jeffrey (1910–2004) and her contributions to her community and to the United States.

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

Ms. STABENOW. Mr. President, today I rise to honor the life of a very dear friend who passed away on March 24 of this year. Millie Jeffrey is an icon in the State of Michigan and in our country for civil rights, women's rights, and worker's rights. Her life has epitomized the principles by which we all strive to live our lives—justice, equality, and compassion.

Although small in stature, Millie has been a giant among all of us who have known her. Words cannot express the depth of affection and respect in which Millie is held, nor can words quantify the lives that she has touched.

Mildred McWilliams Jeffrey, social justice activist, retired UAW Director of the Consumer Affairs Department and a Governor Emerita of Wayne State University, died peacefully surrounded by her family early this morning in the Metro Detroit area. She was 93. In 2000, President William Clinton awarded here the Medal of Freedom, the highest civilian award bestowed by the United States government.

In seeking world peace by ensuring equality for all, Millie spent a lifetime working on labor, civil rights, education, health care, youth employment, and recreation issues. She brought inspiration and humor to the many people she touched—and did so with optimism and undaunted spirit.

Millie's list of accomplishments and awards is long but what she is most remembered for is her zest for organizing. She mentored legions of women and men in the labor, civil rights, women's rights, and peace movements. As President Clinton noted: ''Her impact will be felt for generations, and her example never forgotten.''

Born in Alton, IA, on December 29, 1910, Millie was the oldest of seven children. She graduated from the University of Minnesota in 1932 with a bachelor's degree in psychology and received a master's degree in social economy and social research in 1934 from Bryn Mawr College. In graduate school, she realized that to improve the lives of working women and men she would have to change the system. In the 1930s, that meant joining the labor movement.

Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia and then Educational Director of the Pennsylvania Joint Board of Shirt Workers. In 1936, she married fellow Amalgamated organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers. During World War II, the Jeffreys worked in Washington, DC, as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther.

Mildred and Newman Jeffrey moved to Detroit in 1944 when victor Reuther offered Millie a job as director of the newly formed UAW Women's Bureau. Millie's commitment to equal rights fueled here career at the UAW. She organized the first UAW women's conference in response to the massive postwar layoffs of women production workers replaced by returning veterans. From 1949 until 1954, Millie ran the union's radio station. She moved on to direct the Community Relations Departments. She was director of the Consumer Affairs Department from 1968 until her retirement in 1976.

Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King Jr. in the 1960s. Former executive secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that ''in the civil rights movement, she knew how to fight without being disagreeable.''

Mildred Jeffrey also was very active in the Democratic Party, preferring to work behind the scenes organizing, canvassing, consulting, and fundraising. She was the consummate strategist. Millie provided savvy advice to Democratic officeholders and presidents from JFK to Bill Clinton. Senator EDWARD KENNEDY observed, ''whether it was a worker in a plant, or whether it was a Congressman or Senator or President, Millie inspired people.''

As a founding member and chair of the National Women's Political Caucus, Millie supported female candidates for public office. Twenty years ago she led the effort to nominate Geraldine Ferraro as Walter Mondale's running mate. Most recently, Millie delighted in being represented by Michigan women she supported, Governor Jennifer Granholm, and myself. Millie is the ''political godmother'' for many of us, and we are extremely grateful for her love and support. Millie was one of the most important mentors in my life and I will always be very, very grateful to her.

Millie ran for public office in 1974 and was elected by the people of the State of Michigan to the Wayne State University Board of Governors, an office she held for 16 years—1974–1990. She was so proud of her role in supporting this wonderful university. She served three terms as board chair. Millie loved Wayne State University and was a long-time resident on campus. She never tired of showing visitors around her ''neighborhood''—the Adamany Undergraduate Library, the Hilberry Theatre, and the Walter P. Reuther Library. Millie thrived in the academic environment enriched by Wayne State University students.

Her friendships extended worldwide across all ages and nationalities. Whether discussing math with teenagers in Wayne State's Math Corps, or strategizing at the UN Conference on Women about the plight of sweatshop workers, Millie's capacity for connecting with people was unmatched.

Millie's capacity for connecting with people was unmatched. As one who traveled with her to the Fourth World Conference on Women in Beijing, it was amazing to see people from all over the world, hearing we were from Michigan, asking if we knew Millie Jeffrey and if we could tell them where she was; or that their grandmother, their aunt, suggested they meet Millie Jeffrey.

I often said the way to world peace was to let Millie loose; sooner or later, we would all know Millie Jeffrey and come to understand each other.

Millie was inducted into the Michigan Women's Hall of Fame and was an original board member of the Michigan Women's Foundation. She served in various leadership roles in a wide variety of national and State organizations such as the Michigan Women's Political Caucus, the Coalition for Labor Union Women, Americans for Democratic Action, National Abortion Rights Action League, Voters for Choice, EMILY's List, and the American Civil Liberties Union. She served on the peer review board of Blue Cross and was an active member of the First Unitarian Universalist Church in Detroit.

She was also an adoring mother of a son and a daughter and adoring grandmother who developed and nourished creativity and curiosity in her two grandchildren who she loved dearly, Erica Jeffrey and Thomas Jeffrey. She encouraged Erica's love of ballet. She urged Thomas to travel to learn about the world and was so proud of his AmeriCorps Service.

All of these lists of awards, duties, responsibilities, and committees do not say what Millie is all about: Millie Jeffrey was a one-of-a-kind woman of great passion, of great commitment, of great interest in knowing about each one of us and what we were doing and what we cared and how she could help.

Yesterday, 250 people came to Washington, DC, from all over the country to remember Millie and to share how Millie had touched their lives. Millie's life was celebrated and honored by her family and friends through photos, speech and song. Many of her friends gave heartwarming accounts on how she helped them as well as our country. As the memorial service concluded, one thing became very clear. Millie is no longer with us, but she will be with us forever because her spirit will continue in all of us.

I thank my colleagues for the support of this resolution.

I yield the floor.

Mr. LEVIN. Today, Mr. President, I join Senator STABENOW in introducing a resolution to celebrate and to honor the life of an extraordinary American woman, Mildred Jeffrey. Millie Jeffrey was a shining star in the firmament of our State and Nation. Her legendary courage and her incredible tenacity were an inspiration to all who came within her orbit.

Throughout her life, Millie fought tenaciously to advance civil rights and break down the racial barriers that divide us. She fought for workers' rights, making sure that the people who make up the backbone of our business and industry are given a voice and afforded fair treatment. She was a pioneer for women's rights, opening doors and providing opportunities for women that were merely a dream for women before her. We can all say that our world is more just and more humane because of Millie.

We couldn't begin to count all of the people she assisted, all of the careers she helped launch, and all of the walls she broke down. She was a major force in the election of Michigan's first female Senator and first female governor; how wonderful it is that she lived to see both Senator DEBBIE STABENOW and Governor Jennifer Granholm take office.

It is a mystery how her larger-than-life passion, energy, enthusiasm, and kindness fit into such a tiny frame. Every person who ever met with her or talked with her or felt her spirit was left with a deep sense of awe and respect for her extraordinarily good nature and her commitment to good deeds. It is a badge of honor to be able to say ''I knew Millie Jeffrey.''

Millie famously said that she would retire only when she died, and she certainly lived up to that promise, working and fighting until the very end. We all wish her retirement could have been later, but her legacy and her inspiration will be a major presence in Michigan and the Nation forever.

I know all of my colleagues will join me in celebrating her life and honoring her memory.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 367) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 367

Whereas Mildred McWilliams ''Millie'' Jeffrey, a social justice activist, a retired UAW Director of the Consumer Affairs Department, and a Governor Emerita of Wayne State University, died peacefully surrounded by her family on March 24, 2004, in the Metro Detroit, Michigan area at the age of 93;

Whereas in 2000, President Clinton awarded Millie the Medal of Freedom, the highest civilian award bestowed by the United States Government;

Whereas in seeking world peace by ensuring equality for all, Millie spent a lifetime working on labor, civil rights, education, health care, youth employment, and recreation issues;

Whereas Millie brought inspiration and humor to the many people she touched and did so with optimism and undaunted spirit;

Whereas Millie, a woman of influence and of great moral character, was always a voice of conscience and reason;

Whereas Millie provided a voice for those that could not be heard and hope for those that no longer believed, and because of this her legacy will continue to live on for generations to come;

Whereas Millie's list of accomplishments and awards is long but what she is most remembered for is her zest for organizing, including mentoring legions of women and men in the labor, civil rights, women's rights, and peace movements;

Whereas President Clinton stated that ''her impact will be felt for generations, and her example never forgotten'';

Whereas Millie was born in Alton, Iowa on December 29, 1910, and was the oldest of 7 children;

Whereas in 1932 Millie graduated from the University of Minnesota with a bachelor's degree in psychology and in 1934 Millie received a master's degree in social economy and social research from Bryn Mawr College;

Whereas Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia, Pennsylvania, and later became Educational Director of the Pennsylvania Joint Board of Shirt Workers;

Whereas in 1936, Millie married fellow Amalgamated Clothing Workers of America organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers;

Whereas during World War II, the Jeffreys worked in Washington, D.C., as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther;

Whereas the Jeffreys moved to Detroit, Michigan in 1944 when Victor Reuther offered Millie a job as director of the newly formed UAW Women's Bureau;

Whereas Millie's commitment to equal rights fueled her career at the UAW;

Whereas Millie organized the first UAW women's conference in response to the massive postwar layoffs of women production workers, who were replaced by returning veterans;

Whereas from 1949 until 1954, Millie ran the UAW's radio station;

Whereas Millie moved on to direct the Community Relations Department of the UAW;

Whereas Millie served as Director of the Consumer Affairs Department of the UAW from 1968 until her retirement in 1976;

Whereas Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King, Jr. in the 1960s;

Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that ''in the civil rights movement, she knew how to fight without being disagreeable'';

Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990);

Whereas Millie served 3 terms as chair of the Wayne State University Board of Governors;

Whereas Millie loved Wayne State University and was a long-time resident on campus;

Whereas Millie never tired of showing visitors around her ''neighborhood''—the Adamany Undergraduate Library, the Hilberry Theatre, and the Walter P. Reuther Library of Wayne State University;

Whereas Millie thrived in the academic environment enriched by Wayne State University students;

Whereas whether discussing mathematics with teenagers in Wayne State University's Math Corps or strategizing at the United Nations Conferences on Women about the plight of sweatshop workers, Millie's capacity for connecting with people was unmatched;

Whereas Millie was inducted into the Michigan Women's Hall of Fame and was an original member of the board of the Michigan Women's Foundation;

Whereas Millie served in various leadership roles in a wide variety of national and State organizations;

Whereas Millie served on the peer review board of Blue Cross;

Whereas Millie also was an active member of the First Unitarian Universalist Church in Detroit; and

Whereas the United States mourns the death of Mildred McWilliams ''Millie'' Jeffrey: Now, therefore be it

Resolved, That the Senate—

(1) honors the life of Mildred McWilliams ''Millie'' Jeffrey and her contributions to her community and to the United States; and

(2) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Millie Jeffrey.

HONORING PAST AND CURRENT MEMBERS OF THE ARMED FORCES OF THE UNITED STATES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 424, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 424) honoring past and current members of the Armed Forces of the United States and encouraging Americans to wear red poppies on Memorial Day.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statement relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 424) was agreed to.

The preamble was agreed to.

MEASURES READ THE FIRST TIME—S. 2451 and H.R. 4279

Mr. FRIST. Mr. President, I understand there are two bills at the desk, and I ask that they be read for the first time, en bloc.

The PRESIDING OFFICER. Without objection, the clerk will read the titles of the bills for the first time, en bloc.

The legislative clerk read as follows:

A bill (S. 2451) to amend the Agricultural Marketing Act of 1946 to restore the application date of country of origin labeling.

A bill (H.R. 4279) to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

Mr. FRIST. I now ask for their second reading and, in order to place the bills on the calendar under rule XIV, I object to further proceedings of these matters, en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

MEASURES PLACED ON THE CALENDAR—H.R. 2728 and S. 2448

Mr. FRIST. Mr. President, I understand there are two bills at the desk due for their second reading. I ask unanimous consent that the bills be given their second reading, en bloc.

The PRESIDING OFFICER. Without objection, the clerk will read the titles of the bills for the second time, en bloc.

The legislative clerk read as follows:

A bill (H.R. 2728) to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration; and to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes.

A bill (S. 2448) to coordinate rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with other Federal laws.

Mr. FRIST. I object to further proceedings on the measures, en bloc, at this time.

The PRESIDING OFFICER. Under the rule, the bills are placed on the calendar.

APPOINTMENT OF CONFEREES—H.R. 3550

The PRESIDING OFFICER. The Chair appoints the following conferees on behalf of the Senate:

The Presiding Officer (Mr. Coleman) appointed Mr. Inhofe, Mr. Warner, Mr. Bond, Mr. Voinovich, Mr. Grassley, Mr. Hatch, Mr. Nickles, Mr. Lott, Mr. Shelby, Mr. McCain, Mr. McConnell, Mr. Jeffords, Mr. Reid, Mr. Graham of Florida, Mr. Lieberman, Mrs. Boxer, Mr. Daschle, Mr. Hollings, Mr. Sarbanes, Mr. Baucus, and Mr. Conrad.

ORDERS FOR FRIDAY, MAY 21, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Friday, May 21. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date and the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the Department of Defense authorization bill. There will be no votes tomorrow, but Senators WARNER and LEVIN will have a series of cleared amendments. Following that action, we will proceed to a period for morning business to accommodate Senators who do wish to make statements.

As I stated earlier, there will be no votes during tomorrow's session. The next vote will occur on Tuesday, June 1, the day we return from recess. I will have more to say tomorrow on the post-recess schedule.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:39 p.m., adjourned until Friday, May 21, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 20, 2004:

OFFICE OF PERSONNEL MANAGEMENT

EDWIN D. WILLIAMSON, OF SOUTH CAROLINA, TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS FOR A TERM OF FIVE YEARS, VICE AMY L. COMSTOCK, RESIGNED.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

MARK D. GEARAN, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICES FOR A TERM OF ONE YEAR. (NEW POSITION)

LEONA WHITE HAT, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A

TERM EXPIRING OCTOBER 6, 2008, VICE AMY C. ACHOR, TERM EXPIRED.

NATIONAL COUNCIL ON DISABILITY

MILTON APONTE, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2006. (REAPPOINTMENT)

ROBERT DAVILA, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2006. (REAPPOINTMENT)

YOUNG WOO KANG, OF INDIANA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2006. (REAPPOINTMENT)

KATHLEEN MARTINEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2006. (REAPPOINTMENT)

LINDA WETTERS, OF OHIO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2006. (REAPPOINTMENT)

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 624:

To be colonel

PAUL R. DISNEY JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 624:

To be lieutenant colonel

ERIC R. RHODES, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be lieutenant colonel

EDWIN E. AHL, 0000
DANIEL T. AMES, 0000
WILLIAM O. BAREFIELD, 0000
MICHAEL E. BRAINERD, 0000
DAVID M. BROWN, 0000
JAMES R. CARTER, 0000
MICHAEL D. CHARLES, 0000
TIMOTHY B. EGGLESTON, 0000
GREGORY J. ESTES, 0000
JOSEPH M. FLEURY, 0000
JONATHAN C. GIBBS III, 0000
MARTHA J. HAYES, 0000
JACK B. HERRON, 0000
JAMES P. KING, 0000
WARREN E. KIRBY JR., 0000
MARVIN W. LUCKIE, 0000
JOEL A. LYTLE, 0000
JONATHAN A. MCGRAW, 0000
CAROL A. * MITCHELL, 0000
JERRY L. OWENS, 0000
WRAY B. PHYSIOC III, 0000
CARL R. RAU, 0000
HARRY A. RAUCH III, 0000
BARBARA K. SHERER, 0000
THOMAS L. SOLHJEM, 0000
VALERIE B. * STJOHN, 0000
GARY R. * STUDNIEWSKI, 0000
HARLON J. TRIPLETT JR., 0000
BRYAN J. WALKER, 0000
STEPHEN M. WALSH, 0000
DAVID L. WATERS SR., 0000
JAMES C. WATSON, 0000
THOMAS C. WAYNICK, 0000
JERRY M. WOODBERY, 0000
MARK A. ZERGER, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 6222:

To be lieutenant colonel

MICHAEL J. COLBURN, 0000

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

WILLIAM J. ALDERSON, 0000
JAMES W. GRAYBEAL, 0000
CHARLES D. MCWHORTER, 0000
DENNIS J. MOYNIHAN, 0000
ROBERT D. NEWELL, 0000
HAROLD E. PITTMAN, 0000

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

AARON L BOWMAN, 0000
JAMES R BROWN, 0000
ROBERT L CURBEAM JR., 0000
CHRISTOPHER J FERGUSON, 0000
CHRISTOPHER H FLOOD, 0000
JOHN B HERRINGTON, 0000
WADE E KNUDSON, 0000
RICHARD C MULDOON, 0000
GREGORY A SILVERNAGEL, 0000
CLAY J SNAZA, 0000
ERIC J TIBBETS, 0000
JOHN B WESTERBEKE, 0000
STEVEN R WRIGHT, 0000
MAUDE E YOUNG, 0000

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

THOMAS J BROVARONE, 0000
DARREL S DEHAVEN, 0000
MARY E DEXTER, 0000
ALFRED O GAISER, 0000
ALLAN G GALSGAARD, 0000
MICHAEL R GOOD, 0000
STEPHEN E IWANOWICZ, 0000
MARY J LOGSDON, 0000
ROBERT W MAZZONE, 0000
PETER A NARDI, 0000
GERALDINE L OLSON, 0000
CHRISTOPHER R PIETRAS, 0000
MARK E POWELL, 0000
NEIL C STUBITS, 0000
ROBERT T SUSBILLA, 0000
ROBERT J VINCE, 0000
MARK R WHITNEY, 0000

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

KENT R AITCHESON, 0000
JOHN S ANDREWS, 0000
JOHN S ARBTER, 0000
CLAYTON L ARMSTRONG, 0000
ROBERT A ARONSON, 0000
MICHAEL L ARTURE, 0000
DUANE R ASHTON, 0000
KENNETH W AUTEN, 0000
THOMAS W BAILEY, 0000
DAVID J BARTHOLOMEW JR., 0000
JEFFREY S BARTKOSKI, 0000
RUSSELL J BARTLETT, 0000
TIMOTHY A BATZLER, 0000
STEVEN BAXTER, 0000
THOMAS R BEALL, 0000
STEPHEN W BECKVONPECCOZ JR., 0000
FREDERICK T BLANCHARD, 0000
GEORGE BONSALL, 0000
JAMES R BOORUJY, 0000
STEVEN A BORDEN, 0000
TODD W BOSTOCK, 0000
IRVIN G BOUGH, 0000
DANIEL E BRASWELL, 0000
STEVEN G BROCKETT, 0000
BRIAN J BROENE, 0000
MICHAEL W BROWN, 0000
THOMAS L BROWN II, 0000
SEAN S BUCK, 0000
KENDALL A BURDICK, 0000
RICHARD W BUTLER, 0000
MICHAEL W BYMAN, 0000
KEVIN P CAMPBELL, 0000
SHARON B L CAMPBELL, 0000
RONALD R CARLSON, 0000
EVON B CARTER, 0000
THOMAS J CHASSEE, 0000
JAY M CHESNUT, 0000
TIMOTHY M CONROY, 0000
WILLIAM T COONEY, 0000
BRIAN T COSTELLO, 0000
JOHN J COSTELLO, 0000
CALVIN H CRAIG, 0000
RICHARD T CREANGE, 0000
JOSEPH D CREED, 0000
THOMAS R CRIGER, 0000
TERRENCE E CULTON, 0000
JEFFREY S CURRER, 0000
JEFFREY S DALE, 0000
STEPHEN F DAVIS JR., 0000
TODD C DAVIS, 0000
WILLIAM G DAVIS, 0000
MARK J DEARDURFF, 0000
CARLOS DELTORO, 0000
JOSEPH F DEMARCO, 0000
PAUL S DILLMAN, 0000
DAVID R DIORIO, 0000
DAVID M DOBER, 0000
MATTHEW H DOLAN, 0000
BRIAN T DONEGAN, 0000
CHARLES J DOTY, 0000
ANTHONY H DROPP, 0000
CHARLES F DRUMMOND, 0000
DAVID M DURYEA, 0000
ANDREW W EDDOWES, 0000
MATTHEW J FALETTI, 0000
ROBERT D FINK, 0000
WILLIAM J FLANAGAN JR., 0000
JAMES H FLATLEY IV, 0000
THOMAS A FLISK JR., 0000
DANIEL P FORNEY, 0000
DAVID M FOX, 0000
PAUL J FROST, 0000
DAVID J FUHRMANN, 0000
ANTHONY E GAIANI, 0000
SCOTT M GALBREAITH, 0000
DAVID J GALE, 0000
CHRISTOPHER P GALLAGHER, 0000
MATTHEW J GARSIDE, 0000
MARK D GENUNG, 0000
JOHN M GERAGOTELIS, 0000
MICHAEL M GILDAY, 0000
ROBERT P GIRRIER, 0000
MICHAEL H GLASER, 0000
MICHAEL G GRAHAM, 0000
MARK R HAGEROTT, 0000
ANDREW M HALE, 0000
WILLIAM C HAMILTON, 0000
JEFFREY A HARLEY, 0000
CHARLES K HARRIS, 0000
FRANCIS L HARRISON JR., 0000
WILLIAM J HART, 0000
MARK J HELLSTERN, 0000
DAVID M HENDRICKS, 0000
RANDALL M HENDRICKSON, 0000
PAUL E HENNES, 0000
MICHAEL W HEWITT, 0000
CHARLES R HILL, 0000
BRIAN E HINKLEY, 0000
JOSEPH M HINSON JR., 0000
GEORGE F HOFFER, 0000
OWEN P HONORS JR., 0000
JAMES B HOPKINS II, 0000
ROBERT S HOSPODAR, 0000
JOHN R HOUFEK, 0000
MARK R HOYLE, 0000
THOMAS W HUFF, 0000
PETER P HUNT, 0000
JAMES F HUNTER, 0000
KELLY M JOHNSON, 0000
CJ KALB, 0000
JONATHAN H KAN, 0000
ERIC G KANIUT, 0000
CHRISTOPHER J KELLY, 0000
PHILLIP R KESSLER, 0000
ANDREW A KING, 0000
MARK S KINNANE, 0000
STEVEN G KOCHMAN, 0000
KEVIN J KOVACICH, 0000
JAMES H KRUSE, 0000
DIETRICH H KUHLMANN III, 0000
JAMES M KUZMA, 0000
LEIF E LAGERGREN, 0000
CHARLES W LAINGEN, 0000
BERNARD O LESSARD, 0000
EDWARD J LESTER, 0000
KENNETH C LEVINS, 0000
JAY S LEWIS, 0000
JOHN J LITHERLAND, 0000
BRIAN L LOSEY, 0000
SHERMAN R LUPTON, 0000
ANDREW T MACYKO, 0000
STEPHEN G MARR, 0000
MICHAEL L MARTIN, 0000
DAVID F MATAWITZ, 0000
DAVID N MAYNARD, 0000
STUART A MCCORMICK, 0000
JEFFREY L MCKENZIE, 0000
WILLIAM C MCQUILKIN, 0000
RONALD W MELAMPY, 0000
STEPHEN T MILLER, 0000
MARK C MONTGOMERY, 0000
SCOTT P MOORE, 0000
FRANK A MORNEAU, 0000
ERIC B MOSS, 0000
MICHAEL J MURPHY, 0000
DAVID A MURRAY, 0000
STEVEN J MYERS, 0000
JOHN P NEAGLEY, 0000
RANDALL A NEAL, 0000
DUANE E NESTOR, 0000
JOSEPH F NOLAN, 0000
CHARLES E NORBERG JR., 0000
JOHN C NYGAARD, 0000
JOHN C OBERST, 0000
PAUL G OCONNOR, 0000
JEFFREY A OGUREK, 0000
CLIFFORD I OLSEN, 0000
LEE A OLSON, 0000
MARK J OLSON, 0000
JAMES E OTIS, 0000
JONATHAN M PADFIELD, 0000
PHILLIP C PARDUE, 0000
NEIL R PARROTT, 0000
JAMES PAULSEN, 0000
THOMAS J PAYNE, 0000
TYRONE PAYTON, 0000
JAMES A PELKOFSKI, 0000
GARY C PETERSON, 0000
FREDERICK W PFIRRMANN, 0000
ANN C PHILLIPS, 0000
SCOTT J PHILLPOTT, 0000
JONATHAN D PICKER, 0000
MICHEL T POIRIER, 0000
SCOTT D POLLPETER, 0000
FERNANDEZ L PONDS, 0000
CLYDE C PORTER JR., 0000
MATTHEW J PRINGLE, 0000
WILLIAM R RADOMSKI, 0000
MARK E REDDEN, 0000
MARKHAM K RICH, 0000
STEVEN C RITCHIE, 0000
JOSEPH W RIXEY, 0000
WILLIAM J ROBERTSON, 0000
RONALD B ROBINSON, 0000
ANTHONY C RODGERS, 0000
ENRIQUE L SADSAD, 0000
MICHAEL J SALVATO, 0000
KENNETH R SAULT, 0000
PHILLIP G SAWYER, 0000
PATRICK J SCANLON, 0000
ROBERT J SCHMIDT, 0000
DAVID A SCHNELL, 0000
LEE W SCHONENBERG, 0000
STEVEN R SCHREIBER, 0000
JOHN E SCHWERING JR., 0000
JOHN C SCORBY JR., 0000
JAMES G SCOTT, 0000
EDWARD B SEAL, 0000
JOHN C SHEEHAN, 0000
MICHAEL SHERLOCK, 0000
GARY SHOMAN, 0000

PAUL W SIEGRIST, 0000
CHARLES J SITARSKI, 0000
CHAD M SKIDMORE, 0000
JOHN M SLAUGHTER, 0000
STEVEN E SLOAN, 0000
DIXON R SMITH, 0000
GREGG K SMITH, 0000
HENRY C SMITH, 0000
MICHAEL E SMITH, 0000
TIMOTHY T SMITH, 0000
RICHARD P SNYDER, 0000
THOMAS P SNYDER, 0000
WAYNE P STAMPER, 0000
LEE A STEELE, 0000
JOHN J STEVENS III, 0000
PAUL T STEVENS, 0000
WARD E STEVENS, 0000
ROBERT B STEWART, 0000
JAY T STOCKS, 0000
SCOTT M SUNDT, 0000
CHARLES D SYKORA, 0000
NORBERT E SZARLETA JR., 0000
EDWARD L TAKESUYE, 0000
SCOTT J TAPPAN, 0000
STEPHEN N THOMPSON, 0000
WALTER L TOWNS, 0000
WILLIAM F TRAUB, 0000
JOHN G WALKER, 0000
GEORGE J WALTER JR., 0000
GARY K WARING, 0000
THOMAS G WEARS, 0000
MALCOLM L WEATHERBIE, 0000
THOMAS E WEDDING, 0000
MICHAEL S WHITE, 0000
ANDREW S WHITSON, 0000
KEVIN J WILSON, 0000
EDWARD R WOLFE, 0000
JOHN R WOOD, 0000
RANDOLPH L WOOD, 0000
JANICE M WYNN, 0000
ULYSSES O ZALAMEA, 0000
JOHN A ZANGARDI, 0000
STEVEN C ZARICOR, 0000
KEVIN S ZUMBAR, 0000

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

RICHARD L ARCHEY, 0000
VERNON D BASHAW, 0000
JEFFREY L CANFIELD, 0000
EUSTAQUIO CASTROMENDOZA, 0000
EDWIN J DAUM JR., 0000
KRIS O DAVIS, 0000
ERIC D EXNER, 0000
ROBERT V HOPPA, 0000
STEPHEN A KAPPES, 0000
MATTHEW J KOHLER, 0000
JAMES F MCDOUGALL, 0000
JOHN W MENGEL JR., 0000
ROBIN K MYERS, 0000
ERIC W OLSON, 0000
TIMOTHY B PENCE, 0000
ROY N PETERSON, 0000
JOHN M SANFORD, 0000
JOHN T SEGURA, 0000
FRED C SMITH, 0000

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

THOMAS H. BOND JR., 0000
PATRICIA COLE, 0000
ALICE L. RAND, 0000
LAWRENCE R. SLADE, 0000
CARL R. WALLSTEDT, 0000
DIANE E. H. WEBBER, 0000
CARLENE D. WILSON, 0000
PAMELA J. WYNFIELD, 0000

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

KENNETH R. CAMPITELLI, 0000
JON C. HARDING, 0000
TIMOTHY A. HOLLAND, 0000
CINDY L. JAYNES, 0000
TIMOTHY S. MATTHEWS, 0000

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

JEFFREY J. BURTCH, 0000
STEVEN O. CARDER, 0000
KEVIN R. HOOLEY, 0000
MARK C. JOHNSON, 0000
CHARLES B. JOHNSTON, 0000
FORBES O. MACVANE, 0000
JEFFREY D. PROPER, 0000
JAN E. TIGHE, 0000

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

EDWIN J. BURDICK, 0000
LEE R. JOHNSON JR., 0000
ROBERT J. PETRY, 0000
STEPHEN K. TIBBITTS, 0000

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

ANDREW BROWN III, 0000
JESSIE C. CARMAN, 0000
JOHN D. COUSINS, 0000
PAUL K. HEIM II, 0000
STEVEN W. WARREN, 0000
JONATHAN W. WHITE, 0000

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

JERRY R. ANDERSON, 0000
JANE A. BARCLIFT, 0000
KAY L. DINOVA, 0000
ROBERT L. FIREHAMMER JR., 0000
ROBERT J. GAINES, 0000
ANNEMARIE HARTLAUB, 0000
JAMES E. KNAPP JR., 0000

THE JUDICIARY

LAURA A. CORDERO, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE SHELLIE FOUNTAIN BOWERS, RETIRING.

JULIET JOANN MCKENNA, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE NAN R. SHUKER, RETIRING.

DEPARTMENT OF JUSTICE

ROBERT CLARK CORRENTE, OF RHODE ISLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF RHODE ISLAND FOR THE TERM OF FOUR YEARS, VICE MARGARET ELLEN CURRAN.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 20, 2004:

THE JUDICIARY

RAYMOND W. GRUENDER, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT.

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.