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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, the Reverend Pablo Gonzales, Chief of the Chaplain Service, Veterans Affairs Medical Center, Huntington, WV.

We are very pleased to have you with us.

PRAYER

The guest Chaplain, the Reverend Pablo L. Gonzales, offered the following prayer:

Join me in prayer this morning.

Eternal God, Creator and Redeemer of our great Nation, we lift our hearts, minds, and souls to You on this day of mercy. We humble ourselves before Your omniscience and omnipresence.

Father, we confess to You this day that we are dependent on You. Without You, we can do nothing. We rely on Your grace, on Your mercy, and on Your love to direct this Nation.

We pause to take time away from our busy schedules and from all the many activities to come before Your divine presence. As we humble ourselves before You, pour upon this Senate Your divine Spirit. Allow Your Spirit to flow and give the gifts of wisdom, understanding, and discernment to rest upon the lives of these men and women. We also lift up their families who pay a price of loneliness and sacrifice to this Nation. Be with them, Lord, and keep disease and injury away from them.

Father, lead us beside the still waters. Draw us away from our own agenda and help us to see Your unique perspective. Bless this day, for all things are in Your hands. In Your Name we pray, and all say amen. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Washington, is recognized.

SCHEDULE

Mr. GORTON. Mr. President, this morning the Senate will immediately resume consideration of the energy and water appropriations bill. Senator REID and I hope that Members who wish to offer amendments to the energy and water bill will come to the floor during today's session to offer and debate their amendments under short time agreements. Therefore, rollcall votes are possible during today's session of the Senate.

The majority leader would like to remind Members that the Independence Day recess is fast approaching, and therefore the cooperation of all Members will be necessary to make progress on a number of important items, including appropriations bills, any available conference reports, the Higher Education Act, the Department of Defense authorization bill, and any other legislative or executive items that may be cleared for action.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. SMITH of New Hampshire). Under the previous order, the leadership time is reserved.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

The PRESIDING OFFICER. Under the previous order, the Chair now lays before the Senate S. 2138, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2138) making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

The Senate resumed consideration of the bill.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Bob Perret, a congressional fellow in my office, have floor privileges during the pendency of this bill.

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

Mr. REID. Mr. President, yesterday the chairman of the Energy and Water Subcommittee and I came to the floor with this bill, the fiscal year 1999 appropriations bill, for the programs, projects, and activities of the Department of Energy, Corps of Engineers, the Bureau of Reclamation, and other independent agencies. I support this $21 billion bill. It is not a perfect bill, but it is a very good bill. We worked under very extreme conditions in order to get the bill to the point that we have. This is a balanced bill. We did our best to accommodate everyone's priorities and projects.

Mr. President, on the way back to my office yesterday evening I was with some of the staff, and I asked one of the staff, ''What is that you're carrying?'' And I am not exaggerating, it was a folder, a big looseleaf notebook. And he said they were the requests from Members for projects in this bill.

We did our best. We did not make everyone happy. We tried to make sure that we had a balanced approach so that States could meet their needs.

We did not get all the cooperation that I would like to have had from the administration. They cut $1.5 billion from water projects. This left us with projects unfinished, left us with projects that simply needed to go forward. So we had to rearrange this pot to the point we are now here.

So I recommend this bill to my colleagues. This is a bill that includes

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

about $21 billion for essential services in the Department of Energy and the construction and maintenance of water projects around the Nation.

I hope that, as my friend from Washington has said, Members will come forward and offer amendments. We have a limited amount of time. And I would suggest that if we do not get some amendments coming soon—this a very important appropriations bill—that we should move to third reading and move on to something else.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 2713

Mr. GORTON. Mr. President, on behalf of Senator DOMENICI, for Senator INOUYE, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] for Mr. INOUYE, proposes an amendment numbered 2713.

Mr. GORTON. Mr. President, 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:

On page 18, add the following before the period:

''*:Provided further*, The Secretary of the Interior is directed to use not to exceed $200,000 of funds appropriated herein to provide technical assistance in a study of measures to increase the efficiency of existing water systems developed to serve sugar cane plantations and surrounding communities in the State of Hawaii''.

Mr. GORTON. Mr. President, I ask unanimous consent that the amendment be set aside so that other Members may, if they wish, offer first-degree amendments.

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

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

PRIVILEGE OF THE FLOOR

Mr. REID. I interrupt my friend from Washington and ask unanimous consent that a fellow from the office of Senator JEFFORDS of Vermont, Lisa Carter, be granted privileges of the floor during consideration of the energy and water appropriations bill.

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

Mr. GORTON. Mr. President, our desires not yet having been met, 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. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 2714

(Purpose: To add provisions of Amendment No. 2420 relating to tobacco policy)

Mr. DASCHLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 2714.

Mr. DASCHLE. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

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

Mr. DASCHLE. Mr. President, I have the floor; do I not?

The PRESIDING OFFICER. The minority leader has the floor.

Mr. DASCHLE. Mr. President, I won't be long. I will accommodate the manager of the bill.

Let me just say this is an amendment that reflects where we were yesterday on what we consider to be one of the most important issues facing our country. I am hopeful that we can come back to this legislation again, as we debated it yesterday. The tobacco bill may have died last night, but the tobacco issue is very much alive.

We have noted that as legislation is presented to the Senate we have no recourse but to continue to press for final consideration, to get a vote, and ultimately to pass legislative changes that will allow us to confront the remarkable problems that we are facing in our country today. In South Dakota, 45 percent of teenagers now are addicted to smoking or are smoking—45 percent. Every day, thousands of children continue to light up for the first time.

Many of us feel that even though we lost parliamentarily yesterday, that we have no choice but to continue to press this issue, to continue to force the Senate to consider ways with which to resolve this matter.

As I said, there ought to be principles that unite us, principles that Republicans and Democrats can agree with, principles that would allow the FDA to regulate tobacco as a drug, principles that would allow us to come up with an orchestrated national effort to discourage smoking among teenagers, principles that recognize the importance of research as we continue to confront the myriad of health problems that are directly related to smoking and addiction. Those are principles that ought to unite us.

I don't think anyone ought to come to any conclusion that somehow because the McCain bill died last night that we now can wash our hands of this issue, that we now are going to move that aside and think that everything is just fine with regard to the schedule or with regard to this particular issue. It isn't. We are not going to be fine until we have come to some conclusion about this. It doesn't really matter what legislation comes before the Senate. We are going to be compelled, either in the form of amendment or in a motion to proceed, to force the Senate, to whatever extent we can, to stay focused on this issue until we resolve it. We are open for suggestions on how we might break this impasse, how we might resolve this matter. We are certainly prepared to sit down with our colleagues and come up with a piece of legislation that will work.

We will not let this issue die. We believe very strongly that it must continue. That is, in essence, what this amendment does. This amendment, for the information of all of my colleagues, simply takes us back to the McCain bill and the managers' amendment. The managers' amendment was added after a great deal of consultation with Members on both sides of the aisle. The managers' amendment and the McCain bill passed, I remind my colleagues, on a vote of 19–1 out of the Commerce Committee.

So this is an opportunity, once again, to use a vehicle to start the negotiations to allow us to come to closure on this issue. I had hoped we could do it sooner rather than later. This is an important bill. I hope we can get on to energy and water. I hope we can deal with all of the appropriations bills. Those bills have to be dealt with, but at the same time, many of us believe that tobacco has to be dealt with as well. Our effort to deal with it will have to be in the form of amendments or in the form of our motions to proceed so long as we haven't found any closure on how we ultimately resolve this very, very important national issue.

I hope we can have a good debate on this amendment. I hope we can have some good give-and-take about what we might do, as a Senate, Republicans and Democrats, to break this impasse and ultimately to pass meaningful tobacco legislation this month.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, as the Democratic leader said, what he has proposed now is that instead of dealing with the normal appropriations bills before the Senate, we should go back to a debate which has taken the last 4 weeks of the Senate's time and ignore everything else that is appropriate in the Senate business.

Last evening, in the last vote, his position fell eight votes shy of getting a necessary budget waiver because of its immense cost to the people of the United States. This proposal, obviously, is equally subject to such a point of order, one that I expect that the majority leader is likely to interpose soon. The result will be identical. In other words, it is simply a frustrating waste of the Senate's time when the Senate ought to be engaged in the business that is before us, and that is the energy and water appropriations bill.

I share one sentiment with the Democratic leader. I believe that the Senate should pass a bill relating to tobacco. I don't believe that it should be

anything like the bill that was before us yesterday, by any stretch of the imagination. But if we are to pass legislation on the subject, it is going to require more understanding and more tolerance of one side to the other than evidenced in the course of the last 3 or 4 weeks. It clearly is not going to be accomplished by the kind of amendment that was placed before the Senate at this point.

Awaiting further instructions from the majority leader, 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. NICKLES. 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. NICKLES. Mr. President, I ask unanimous consent to proceed as in morning business for 2 minutes.

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

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2187 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FAIRCLOTH. Mr. President, I rise in strong opposition to the McCain bill, and I urge my colleagues not to revive this job-busting and budget-busting bill in committee. Like the wicked witch, it is dead, and I am delighted that its tortured life is over. I would like to reflect on this past month of debate on the tobacco bill, Mr. President, and I want to say a few words about this bill and its effects.

Mr. President, tobacco has a long and proud heritage in North Carolina. Since Colonial times, hard-working men and women have supported their families on tobacco, whether by coaxing tobacco from the ground or by processing it into the products used by consumers across the country.

On that note, Mr. President, I want to say a few words in defense of the people we have heard least about during this endless debate. I'm talking about the hard-working men and women of the tobacco manufacturing facilities. We hear all about Big Tobacco, Mr. President, but they're the folks who will suffer if this bill is not stopped. Many thousands of North Carolinians earn their livings in tobacco manufacturing and distribution. They work in the plants and in the warehouses, in the factories and on the loading docks, and on the interstates transporting the product.

These are good jobs, Mr. President, good jobs with good wages and good benefits. This bill puts those working people in its cross hairs. It is no secret to the people of my State that, in their declaration of war on tobacco, President Clinton and Vice President GORE assaulted the heart of our agricultural heritage. The anti-tobacco armies and the trial lawyers created the most serious threat to face the tobacco family in many years.

Just look at the line-up in Congress. Just look at the overwhelming support in the Democratic caucus for this bill. Democratic Senator DICK DURBIN wails that tobacco is the only government-supported crop ''with a body count.'' Democratic Senator TED KENNEDY decries tobacco with characteristic bluster and charges the industry with ''the insidious and shameful poisoning of generations of children.'' If we defeat this bill, Mr. President, it will be with the help of just a couple of Democrats. Where are the defenders of the working folks?

This is not about Big Tobacco, Mr. President, it's about hard-working men and women. The unions and I don't always agree, Mr. President, but I want to insert into the RECORD a statement from the North Carolina A.F.L.–C.I.O. They hit the nail on the head—this is about saving our jobs and saving our communities—and I stand with the working folks against the liberals, the trial lawyers, and the other special interests bent on destroying jobs.

Phillip Morris and R.J. Reynolds major employers in North Carolina. I'm proud of the working men and women at these factories. They're not the most popular folks on Capitol Hill these days, but that fact just speaks volumes about the confused values up in Washington, because we should honor their hard work not try to throw them out of their jobs. And they're not the only ones who will lose their jobs. These taxes will cripple countless businesses.

The McCain bill seeks to increase retail cigarette prices as much as $4.98 in real terms by 2004, tapering off to $3.80 by the year 2007. I am informed that this could lead to a reduction of nearly 50 percent in retail cigarette sales, along with large-scale increases in illegal smuggling activities, and that will cost American jobs.

By 2004, the year in which the payments under the McCain proposal peak, the loss in cigarette sales will lead to devastating economic consequences, and it will be the working men and women who will feel this pain. The economic models show that the price increases—and the effects of increased foreign smuggling—could lead to job losses approaching 1,152,974 workers nationally. That is a mind-boggling number, just think of 1,152,974 disrupted lives, all those hopes and dreams thrown into doubt and chaos. These are real people, supporting real families, working in diverse businesses. They are not just tobacco manufacturing workers, but also convenience store clerks, line workers in paper mills, long distance truckers, and graphic artists in advertising agencies.

For example, in North Carolina, it is estimated that the impact of this proposal will lead to a total loss of 48,691 direct jobs. The effect would be similar to a lay-off of this magnitude from a single employer, Mr. President, with the total impact on the community approaching 161,953 jobs. The implications of the McCain bill would be similar to laying off all of the 40,100 employees of both Burlington Industries in Greensboro and Family Dollar Stores of Charlotte.

However, most of these jobs are in communities that do not have any other industries of comparable size, so it is highly doubtful whether displaced workers would be able to find new jobs near home. Some supporters of the tobacco bill have questioned whether this matters. They claim that displaced workers can just move to where the jobs are. Well, that's not good enough. People have roots in their communities. Any farmer will tell you that you risk killing a plant when you pull out its roots and move it. People are no different.

And even if displaced workers can find new jobs without displacing their families and abandoning their communities, they are not likely to be able to match their current salaries and benefits. These are not wealthy people. These are working people. They simply cannot afford to lose a significant portion of their income.

We can reduce underage tobacco use. But we won't do it by punishing the innocent and honorable men and women who work in the tobacco industry. And we won't do it by destroying the economic engine that has supported their communities for generations. Mr. President, the men and women who work in the tobacco industry and the people who depend upon them deserve our respect and support. They have earned it. Please join with me in giving it to them.

I ask unanimous consent that the statement from the North Carolina AFL–CIO be printed in the RECORD.

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

NORTH CAROLINA UNIONS STAND UP FOR TOBACCO JOBS: URGE POLITICAL AND BUSINESS LEADERS TO SAVE STATE'S ECONOMY BY JOINING FIGHT FOR FAIR SETTLEMENT

RALEIGH.—''Save Our Jobs, Save Our Communities,'' was the rally call of the state AFL–CIO and its unions representing workers in the tobacco and related industries. They're gravely concerned with the negative impact on North Carolina jobs and the economy if current tobacco legislation pending in the U.S. Congress becomes law.

The unions want political and business leaders to stand up for workers in tobacco and related industry, who will lose their jobs if the right tobacco deal is not passed in Washington.

''I'm here today to speak up for the thousands of hard-working North Carolina men and women whose jobs are threatened by tobacco proposals coming out of Washington, D.C.,'' said James Andrews, president of the North Carolina AFL–CIO. ''These workers have been forgotten by the elected officials who are more concerned about politics then stopping underage smoking and keeping good jobs in our communities.''

''The nation needs an end to the tobacco wars,'' he added. ''Like everyone in this country, we want to stop kids from smoking. The unions in the industry have consistently

supported strong, effective controls on youth access to tobacco. However, we also want to make sure any proposal protects our jobs.''

Pending legislation in the U.S. Senate would devastate many communities in the state, the union leaders charge. ''The McCain bill now before the Senate would destroy jobs, bankrupt the industry and create a black market in which its impossible to protect our children,'' said T.J. Warren of the Bakery Confectionery and Tobacco Workers Union.

Last June when the State Attorneys General worked out a settlement with the tobacco industry, the unions had high hopes of ending the tobacco wars with legislation that helped national health goals but at the same time preserved jobs.

''I am tired of hearing about proposals that destroy jobs and increase taxes in the name of tobacco reform legislation,'' said Warren. ''Many members of Congress want to punish the tobacco companies. But, multinational tobacco firms aren't going to be punished. They'll switch production to low-wage countries and thrive. No one gets punished except the U.S. grower and worker and the communities in which we live, work and spend our consumer dollars.''

''If tobacco moves overseas our plant will close. It cannot be converted to produce other products. More than 90% of what Acusta Corporation makes in Brevard is sold to cigarette companies. We make cigarette papers, foil, package and cellophane,'' said Jerry Stuart, president of Paperworkers local union 1971. ''In the western part of North Carolina good jobs are scarce. If our plant closed it would be an economic disaster area. Not only would Paperworkers be out of work but many small businesses and even small towns would close up.''

''Our members do not want their children to smoke, but they don't want to lose their jobs. These drivers who have established a middle class way of life would be forced into the working poor,'' said Chip Roth of the Teamsters Union. ''The Attorneys General came to a reasonable settlement that will crack down on teen age smoking while allowing the industry to continue.''

''I'm convinced a nation as resourceful as ours can devise national legislation that ends the tobacco wars and fulfills our national public health goals without destroying quality U.S. jobs and devastating the communities in which we live and work,'' said Andrews. ''I refuse to believe that a nation built on freedom and fairness through compromise cannot give the nation what it needs—an end to the tobacco wars and a clear, predictable future for our jobs and families.''

The unions would support a legislative solution that:

Gives Americans a clear, predictable future where kids don't smoke, public health goals are met and smokers and non-smokers alike have their rights respected.

Maintains the U.S. manufacture and export of a product that both domestic and foreign consumers want, thereby preserving U.S. jobs and communities.

Avoids unfair and regressive taxes that single our some individuals to bear the burden while making possible an immensely profitable black market in which we cannot control cigarette sales.

Ends the uncertainty of unpredictable litigation and relentless regulatory battles and brings stability to the industry and its jobs.

Mr. NICKLES. 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. DOMENICI. 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. DOMENICI. Mr. President, I raise a point of order that the pending Daschle amendment violates section 302(f) of the Budget Act and that it would cause the Energy and Water Subcommittee to exceed its 302(b) allocation.

Mr. REID addressed the Chair.

MOTION TO WAIVE THE BUDGET ACT

Mr. REID. Mr. President, I move to waive the Budget Act to permit consideration of the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Mr. President, for the information of all Members, they should understand that this amendment on the part of the Democratic leader does not take us back to where we were yesterday. This is a bill that might best be called Commerce 2. It does not include any of the drug provisions; it does not include a repeal of the marriage penalty; it does not even include the Gregg amendments or the Durbin amendments. It does not include the amendment that was one of mine that was passed to limit attorneys' fees. In effect, this doesn't take us back to yesterday afternoon, it takes us back to 4 weeks ago. I hope that Members will overwhelmingly deny this.

Mr. DOMENICI. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered on the motion to waive.

QUORUM CALL

Mr. REID. Mr. President, a number of people on this side want to speak on this matter now before the Senate. Therefore, 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. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. DORGAN. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk resumed the call of the roll.

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

Mr. DORGAN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 2]

Craig	Gorton	Smith (NH)
Domenici	Lott	
Dorgan	Reid	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

The legislative clerk resumed the call of the roll.

Mr. LOTT. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Mississippi. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. FAIRCLOTH is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—96

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Allard	Frist	Mack
Ashcroft	Glenn	McCain
Baucus	Gorton	McConnell
Bennett	Graham	Mikulski
Biden	Gramm	Moseley-Braun
Bingaman	Grams	Moynihan
Boxer	Grassley	Murkowski
Brownback	Gregg	Murray
Bryan	Hagel	Nickles
Bumpers	Harkin	Reed
Burns	Hatch	Reid
Byrd	Helms	Robb
Campbell	Hollings	Roberts
Chafee	Hutchinson	Rockefeller
Cleland	Hutchison	Roth
Coats	Inhofe	Santorum
Cochran	Inouye	Sarbanes
Collins	Jeffords	Sessions
Conrad	Johnson	Shelby
Coverdell	Kempthorne	Smith (NH)
Craig	Kennedy	Smith (OR)
D'Amato	Kerrey	Snowe
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Domenici	Landrieu	Thurmond
Dorgan	Lautenberg	Torricelli
Durbin	Leahy	Warner
Enzi	Levin	Wellstone
Feingold	Lieberman	Wyden

NAYS—2

Bond	Breaux

NOT VOTING—2

Faircloth	Specter

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I yield to Senator MCCAIN for 2 minutes.

Mr. MCCAIN. Mr. President, I intend to vote with the majority leader because I believe that it is not going to serve any useful purpose for us to continue in this parliamentary dilemma. I am hoping that negotiations and discussions are beginning, that perhaps we can reach some agreement and move this issue forward in the future. But right now I think we need to move forward with legislation.

Mr. LOTT. Mr. President, I now move to table the pending motion to waive, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to waive. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. FAIRCLOTH) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 164 Leg.]

YEAS—54

Abraham	Enzi	Mack
Allard	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Brownback	Grassley	Roberts
Burns	Gregg	Roth
Byrd	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner

NAYS—44

Akaka	Feinstein	Levin
Baucus	Ford	Lieberman
Biden	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Cleland	Kennedy	Robb
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Torricelli
Dorgan	Landrieu	Wellstone
Durbin	Lautenberg	Wyden
Feingold	Leahy	

NOT VOTING—2

Faircloth	Specter

The motion to table the motion to waive the Congressional Budget Act with respect to amendment No. 2138 was agreed to.

The PRESIDING OFFICER. The point of order is sustained and the amendment falls.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. THOMAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

Mr. KENNEDY. Will the Senator withhold that for 2 minutes so I can make a comment?

Mr. THOMAS. Mr. President, I will withhold for some debate, but not for the offering of an amendment.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have just seen an opportunity for the Senate to address the issue of public health for the children of this country once again, with the introduction of the legislation by Senator DASCHLE.

This is going to be the first of many attempts to try to ensure that the Senate is going to take action to try to protect the young people of this country. That is what this issue is all about. What we have just seen as a result of the vote is that the Republican Party is stonewalling action here in the U.S. Senate and, evidently, still kowtowing to the power of big tobacco and their campaign contributions.

We are not going to be silent on this issue, and we are going to continue to raise it. We believe that it is the most important public health issue, certainly for the children of this Nation, and it is an issue that is not going to go away.

So maybe today there is one more opportunity, by a narrow margin, to defeat those forces and for a reasonable and responsible approach on this issue. This issue is not going to go away. Our Republican friends had better get used to addressing it because they are going to have the opportunity to do it many more times until we get responsible action here, where the Senate is responding to the people's needs, the families' needs, not the interest of big tobacco.

This amendment by Senator DASCHLE would have given the Senate a second chance—an opportunity to reconsider its ill advised action of last night. A minority of Republicans used a transparent parliamentary ploy to frustrate the will of a majority of the Senate. The two votes last night proved that a bipartisan majority of the Senate supports tough antismoking legislation. It also proved that an obstructionist group of Republicans will stop at nothing to prevent fair consideration of the McCain bill. Those Republicans put the interest of the tobacco industry above the health of America's children. For the last four weeks, they have parroted the messages being broadcast in cigarette company advertisements. Last night, they gave their votes as well as their voices to Big Tobacco.

This issue will not go away. It will haunt the Republicans until they allow the bipartisan majority which exists to pass strong antismoking legislation to do so. Just as the Democratic leader brought the issue back to the floor today, we will bring it back again and again. This willful band of Republican obstructionists may have killed a bill last night and blocked consideration of the Daschle amendment today, but they cannot kill an idea whose time has come. Make no mistake, the time has come to protect our children from the evil influence of the tobacco industry.

The times has come to stop 3,000 children a day from beginning to smoke.

The time has come to save those children from a lifetime of addiction and premature death caused by smoking-induced illness.

The time has come to raise the price of cigarettes so they will not be easily affordable to children.

The time has come to stop the tobacco industry's targeting of children with billions of dollars of seductive and misleading advertising.

The time has come to protect millions of nonsmokers from the health hazards of secondhand smoke.

The time has come to prevent the 400,000 deaths caused each year by tobacco use.

No power on Earth—not even the Republican leadership of the Senate—can stop an idea whose time has come. The time has come for the Senate to reject the perverse influence of Big Tobacco, and to do what is right for America's children.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, first I just have to say to the Senator from Massachusetts that I am always sort of offended with the idea that if someone doesn't agree with him, they are suddenly a captive of special interests. I think that is very unfair. There are people who have different views, legitimate views, and I think they should be free to express those.

Mr. President, I ask unanimous consent that the Senate proceed to debate only until 12 noon.

Mr. KERRY. Reserving the right to object, and I will not object, I wanted to ask for a few minutes before we enter into that debate.

I am not submitting an amendment. I just wanted to have the right to make a comment for 2 minutes.

Mr. THOMAS. I absolutely have no objection to that. We are simply asking that the Senate proceed to debate until 12 o'clock.

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I want to join my colleague, Senator KENNEDY, in expressing what just happened here in the Senate. We just lost an opportunity to, in effect, begin with a clean bill. The complaint yesterday was that the bill had been too loaded down. The complaint yesterday was that the process had gotten away from us. In effect, what Senator DASCHLE did was put us back in the place where we began, to a committee piece of legislation that came to the floor by a vote of 19 to 1. And it was a piece of legislation, before the Lugar amendment was put in, before the liability amendment of Senator GREGG had passed, before the marriage penalty, before the Coverdell

drug plan, before all of those things that were accused of loading it up. So, in effect, we had an opportunity to really start from scratch learning the lessons that the Senate had learned over the course of the last 3 weeks. But once again that was rejected.

As the Senator from Massachusetts said, this will be revisited. This issue is not one that will go away. As I said previously, you can run but there is no way to hide with respect to the responsibility that is expected for our children in the efforts to reduce teenage smoking. That will be revisited.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, the McCain bill is dead, and I say good riddance. It was nothing more than a massive tax increase on working Americans to fund an expansion of the Federal government. However, I suspect that we will revisit the tobacco issue, and I want to ensure that my colleagues remain aware of a critical issue to the people of my State. I'm talking about thousands of tobacco farm families. These are people who depend on tobacco farming for their livelihood and who share a long and proud heritage.

Mr. President, my farmers are hurting, and we're losing more and more of them every year. The tobacco quota continues to drop, but not their credit payments, so they're getting squeezed to the limits. Some of them are well past their limits and were forced off their farms.

I believe that we will face the tobacco issue again next year. Certainly, whether or not we do a small and far less expensive youth access bill without a tax increase at the end of this year, we will return to the so-called tobacco settlement next year. If we return to this bill next year—not in a politically charged atmosphere just five months from Election Day—it will be far easier to manage this process and to come up with a reasonable bill that addresses the needs of all parties. That means farmers, and that is a critical point, because they are the folks on the front line and under fire in this war on tobacco.

We need to address this issue in a calm and reasonable atmosphere, not this hysteria, and I look forward to that debate. The men and women of the tobacco family need some certainty. If the Democrats want to continue their war against tobacco—and I want to point out that just two Democrats voted to kill the McCain bill—I say ''protect the farmers'' because they are the innocent victims of this unfair assault. This is indeed an unparalleled assault on their crop.

The farmers need help—and a settlement bill must include this help—in order to restructure their debt to a manageable level. A long-term payment scheme will not service their debt because tobacco production will continue to drop. These farmers fear that the creditors will call the loans and the fire sales that follow will depress land and equipment prices. They can't sustain this assault by their own government.

I want to be sure that the next generation of farmers have opportunities to grow tobacco, and I will fight to make sure that they have those tools, because they are the future of our nation. They grow our food. In Sampson County, North Carolina, where I live, you see the slogan ''Support agriculture or try used food,'' and that sums it up. We cannot let our farmers suffer. We will not let our farmers suffer.

I look forward to this debate—I hope it will be a reasonable one rather than a tax-and-spend bonanza—and I look forward to the effort to prepare our farmers for the future.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I intend to offer an amendment at an appropriate time, probably around noon. What I want to talk about is national policy with respect to renewable energy.

I started on this issue back when I first came to Congress, which was in 1975, when this Nation woke up and realized that we were very vulnerable to the supply of oil. At that time, you may remember, we had lines of cars waiting for gasoline. We had terrible shortages. We realized that this Nation, in order to make sure that it had a future, had to do something about it. Working with my friends in the House, at that time we established a wind energy program, which is still going strong. We also increased the funding in research into solar energy and the advantages that it gives to our society to recognize that the Sun is a tremendous source of energy and that it can be harnessed. We also looked at biomass options as well.

Subsequent to that, when I came to the Senate, I also worked with the committee that handles it on the authorizing side. We developed a national policy. I had hoped that national policy would have mandated the course of action necessary to get this Nation to have 30 percent of its energy supplied by renewable sources. However, every word of my amendment was adopted except one, and that one was, instead of ''shall,'' it said ''may.'' That kind of switched things around as far as its importance. But the importance to continue to move forward to shift our dependence on foreign oil is something that has not gone away.

At that time, we established a chart of where we ought to be. Right now, under that chart of going towards 30 percent of our energy to come from renewable, it is at 10 percent. That is where we are supposed to be on course. We are not. We are at 8 percent.

What has happened now in this bill is that we have seen that renewables are cut and whereas, although things are perhaps more popular, or whatever items are increased, renewables are cut. Last year we got an additional $20 million approved, but when it got to conference, it disappeared. We are not making the kind of progress that this Nation needs in order to be able to become less dependent and, hopefully, someday independent of foreign sources.

If we look at the world situation now, we should understand that the largest amount of oil right now to take out of the ground, so to speak, is not available. The Crimean, which is one of the most volatile areas in the world, has the most oil that has to be looked to for the future. I think it is about 70 percent of what is available at the world level. The second area is the Persian Gulf. Obviously, neither of those is very close to us. So our dependency is increasing.

If you want to take a volatile area, you ought to take Crimea, right in the middle of one of the most volatile situations right now, including the areas of Pakistan all the way up through to Russia at the other end. And you have Iran and Iraq in the area. Those are areas that the pipelines would have to go through. Incredibly, also with expanding availability of nuclear weapons, these are very fragile areas. To think that we would have to rely upon them is very difficult. The same is true also, of course, with the Persian Gulf. Everyone is familiar with the problems we had in the Persian Gulf and the nonreliability at certain times of the availability of that oil.

The question is, What should we do? We decided years ago that we could get to 30 percent, really, with utilization and to a large extent of biomass, as well as wind and solar energy, and that we could do it with little or no increase in the cost of availability of the fuel, but it could give us the kind of utility we need. As I pointed out, we have not made any progress in recent years. In fact, we are sliding back from where we ought to be.

So the amendment that Senator ROTH and I will offer today is about priorities. I think we all agree that increased domestic energy production should be a priority. We would agree that a lower balance of payments should be a priority. We would stand up to U.S. companies selling U.S. manufactured energy technologies in overseas markets. We would cheer the increased jobs, which would mean for every State in the Nation. We would support the small companies across this Nation working to capture the booming global energy market. We would make it a priority to increase domestic energy production and promote clean air. But that is not what has happened here. The bill before us further whittles away at our Nation's efforts to wean itself from foreign oil.

The priorities in the bill for our Nation's energy policy go back years. This legislation will erode our efforts to develop technologies that increase domestic energy production. This bill ends commitments made to small energy companies that depend on Federal

assistance to enter the giant global energy market. The funding levels contained here reduce our Nation's efforts to make major advancements in energy development, energy that is affordable, that is a clean, and, most importantly, made in America.

Today, Senator ROTH and I offer an amendment to increase our Nation's investment in clean domestic production. The amendment would restore funding to the Department of Energy's renewable research and development budget.

Mr. President, the fiscal year 1999 energy and water appropriations bill cuts funding for solar, cuts funding for wind, cuts funding for biomass, cuts funding for hydrogen, cuts funding for geothermal, and cuts funding for hydropower research and development by $120 million, or 33 percent below the administration's request, and $20 million from the fiscal year 1998 level. This $380 million account takes a $120 million cut. The amendment we offer today simply attempts to add back half this level, or $70 million, to the renewables budget.

A vote for this amendment is a vote to reduce our country's dependence on foreign oil from rogue nations like Iraq. A vote for this amendment is a vote to support small businesses all across the United States that produce clean renewable energy products. A vote for this amendment is a vote to help the same small businesses grab onto a chunk of that rapidly growing export market for renewable products. A vote for this amendment is a vote for cleaner air for our children.

Mr. President, I am going to address each of these reasons of why my colleagues should support this bill in turn.

Nearly half of all of our Nation's oil is imported today. These imports account for almost $60 billion, or 36 percent; 36 percent of the trade deficit is in this one area. These are U.S. dollars being shipped overseas to the Middle East which could be put to better use here at home.

Consider the following chart, chart No. 1. This chart shows that the U.S. Energy Information Administration predicts that we will import even more of our oil, two-thirds of all oil we consume, by the year 2020. That means we will continue to be held hostage by oil-producing nations, including rogue nations like Iraq.

This chart, as you can see way out here, shows we are just going to have increased prices in oil and all sorts of difficulty as we get out to 2020. U.S. petroleum imports are expected to reach two-thirds of consumption in the year 2020.

Our second chart, Mr. President, shows that we are not alone in our increasing dependence on foreign sources of oil. The Energy Information Administration also predicts that by the year 2020 the Persian Gulf will supply one-half of the world's oil exports—one-half. Why would we continue to increase our addiction to that very volatile area of the world?

We can reduce our dependence on Persian oil by continuing our investment in a clean domestic energy. I believe that these charts demonstrate very clearly that action must be taken. The goals that we set a few years ago to say that we should be at 30 percent of renewables must be adhered to.

Chart No. 3 shows that the United States currently obtains 8 percent of our energy from renewable sources. That is OK, but we can do better. We should do better. We must do better. In fact, in 1991, during consideration of the Policy Act, the Congress agreed to an amendment to boost our percentage of renewable power to 20 percent by the year 2000 and 30 percent by the year 2010. How will we ever get there if we keep cutting our commitment to the small businesses across the Nation that are moving forward with these technologies?

Chart No. 3, as you can see, indicates what we had in 1996. We had petroleum, 38.1 percent; nuclear, 7.6; renewables, 7.9; coal, 22.4; natural gas, 24 percent.

This percentage—7.9—if we were on target, if we were doing what we agreed to do when the act was passed, would now be 10 percent. It is not approaching the goal that we have agreed upon as a national priority.

Chart No. 4 shows that renewable energy is produced in every State in the United States. I think all Senators ought to take that into consideration. What you are doing is hurting the small businesses located in every State in the United States. Every Senator in the United States is a stakeholder in the debate we are having on the floor today.

Let us take a look now at the next chart that we have. I think pictures make points better than words. I want to share with you pictures of a variety of renewable energy projects across the country.

This is chart No. 5. It shows the Kotzebue Electric Association village power project. It is in Alaska. It is a wind project coming about from the bill that was put into effect at the end of the 1970s.

This project will reduce emissions from diesel power and will reduce fuel transport costs to villagers. It is in existence. It is one that is easily replicated. It should be available, but we need to have more assistance, and we cannot cut back on that assistance which has been so productive in getting us the improvements we have had.

Chart No. 6, this shows you the geographic distribution throughout our Nation. It shows that in the State of Oklahoma we have taxpayer dollars employing a geothermal heat pump in the State capitol building. This is geothermal, which obviously is another available energy supply, but we still need to have the research and the ability to replicate and duplicate and to find out better ways to be able to tap and utilize geothermal.

Chart No. 7 gets to another—this one is where we have the most availability in this Nation and where we can proceed without in any way hampering the present energy sources. We have the ability in this Nation with all its agricultural resources to produce biomass energy which would allow us to go forward to get to the targeted goals. But that is cut back.

This is the Bioten Biomass Plant, Red Boiling Springs, TN. This project produces energy from sawdust and will test other biomass fuels including wood residues and agricultural wastes.

The next one we have is chart No. 8, which is the Stirling Dish Concentration Engine at Sandia National Laboratory in Albuquerque, NM—a great State, New Mexico. This system, created through a public/private partnership, uses heat generated by the Sun's rays to produce utility grade electric power.

The next is a solar-powered school speed limit sign. This is an interesting use of solar energy—reducing dependence on electric power and ensuring that it works anytime the Sun is up, whether there are clouds or not.

Chart No. 10 is entitled ''Waterfront Office Buildings.'' Mr. President, not only do these projects currently help, but they will not be moving forward as fast as they could if we don't at least put some of the money back that is used to fund it. Waterfront office buildings, these are located in Louisville, KY. These buildings are heated and cooled by geothermal heat pumps, saving the hotel $25,000 per month in utility costs.

Mr. President, these are the types of things we are looking at.

I see my good friend and cosponsor is here. If he would like to take some time, I am happy to yield the floor to him.

Mr. ROTH. I thank the Senator. I appreciate his offer as I am in a conference on IRS and it is important that I get back there as promptly as possible.

I appreciate the opportunity to speak briefly on this most important amendment.

Mr. President, as you know, Senator JEFFORDS and I are offering an amendment today that will restore funding for renewable energy programs in the fiscal year 1999 energy and water appropriation's bill. The renewable energy program has been cut by 33 percent below the administration request and $27 million below fiscal year 1998 levels. This amendment would add $70 million back to the renewable budget restoring all programs to fiscal year 1998 levels and boosting some programs 10–20 percent more. Even with these increases, America's investment in wind, solar, biomass, and other clean energy technologies will be well below the funding levels of 3 years ago.

Mr. President, renewable energy technologies represent our best hopes for reducing air pollution, creating jobs and decreasing our reliance on imported oil and finite supplies of fossil fuels. Whatever one's position on the

issue of climate change—these programs promise to supply economically competitive and commercially viable exports. I believe that the nation should be looking toward alternative forms of energy, not taking a step backward by cutting funding for these important programs.

My own state of Delaware has a long tradition in solar energy. In 1972, the University of Delaware established one of the first photovoltaic laboratories in the nation. The university has been instrumental in developing photovoltaic cells, the same type of technology that powers solar watches and calculators.

Delaware has a major solar energy manufacturer, Astro Power, which is now the fastest growing manufacturer of photovoltaic cells in the world. In collaboration with the University of Delaware and Astro Power, Delaware's major utility—Delmarva Power & Light—has installed an innovative solar energy system that has successfully demonstrated the use of solar power to satisfy peak electrical demand. Through this collaboration, my State has demonstrated that solar energy technology can be an economically competitive and commercially viable energy alternative for the utility industry.

It is vital that we continue to manufacture these solar cell products with the high performance, high quality, and low costs required to successfully compete worldwide.

Investment in Department of Energy solar and renewable energy programs has put us on the threshold of explosive growth. Continuation of the present renewable energy programs is required to achieve the goal of a healthy photovoltaic industry in the United States.

While the solar energy industries might have evolved in some form on their own Federal investment has accelerated the transition from the laboratory bench to commercial markets in a way that has already accrued valuable economic benefits to the nation. Solar energy companies—like Astro Power—have already created thousands of jobs and helped to reduce our trade deficit through exports of solar energy systems overseas, mostly to developing nations, where 2 billion people are still without access to electricity.

International markets for solar energy systems are virtually exploding, due to several key market trends. Most notably, solar energy is already one of the lowest cost options available to developing countries that cannot afford to build large, expensive centralized power generation facilities with elaborate distribution systems.

The governments of Japan, Germany, and Australia are investing heavily in aggressive technology and market development in partnership with their own solar energy industries. Until recently, Japan and Germany held the lead in world market share for photovoltaics; the United States has only recently recaptured international market dominance.

Cutting funding for commercializing these technologies would have a chilling effect on the U.S. industry's ability to compete on an international scale in these billion-dollar markets of today and tomorrow. The employment potential of renewables represents a minimum of 15,000 new jobs this decade with nearly 120,000 the next decade.

Mr. President, I might also add biomass is another form of renewable energy with great potential. While traditionally biomass includes the use of wood chips and trash to create electricity, Maryland and Delaware are exploring the opportunities to use poultry manure as a biomass fuel. Manure used in this manner would not be spread on fields, a practice implicated by some as a cause of the recent outbreaks of pfiesteria.

The electricity generated by the plant could then be sold to electric companies, the ash from the burning manure could be marketed as an environmentally sensitive fertilizer. In England the poultry litter fueled electric plants produce over 38.5 megawatts of power and burn 440,000 tons of chicken manure a year.

The Jeffords/Roth amendment will restore the renewable energy accounts so that poultry manure fired plants and other renewable opportunities may become a real possibility in the future.

It is imperative that this Senate support renewable energy technologies and be a partner to an energy future that addresses our economic needs in an environmentally acceptable manner. My State has done and will continue to do its part. I hope my colleagues in the Senate will look to the future and do their part in securing a safe and reliable energy future by supporting this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. Mr. President, I thank the Senator from Delaware for his very eloquent statement and for his dedication to trying to get this Nation on the course it needs to be, to get off its dependency on oil. It has been a pleasure working with him over the years, and I look forward to continuing to do so.

I also would like to add two other Senators as cosponsors of this amendment: Senator MOYNIHAN of New York, and also Senator ALLARD from Colorado.

Mr. President, when I turned over the discussion to Senator ROTH, we were in the middle of going through charts which demonstrate right now the tremendous effort that is going on, and what needs assistance to make it even better, because we are sliding behind the results at this point of where we ought to be from these charts.

The last one I showed, to start over again, is the Waterfront Office Building in Louisville, KY, where they are using geothermal—which, incidentally, can use heat to cool, which is sometimes a little confusing. But the way it uses its geothermal, it saves this hotel $25,000 a month.

Now, let us take a look at some of these other charts so everyone here has a better opportunity to understand the depth of interest and the depth of participation in this Nation by private enterprises which are trying to reduce the Nation's dependence upon oil. That enthusiasm is out there, but it needs to be assisted. It needs to be demonstrated that we can even do better than we are doing, and we are nowheres doing as much as we used to be.

The next chart, chart 11, indicates several States have greater wind potential than California, where the vast majority of wind development has occurred to date. The top 20 States for wind energy potential include North Dakota, Texas, Kansas, South Dakota, Montana, Nebraska, Wyoming, Oklahoma, Minnesota, Iowa, Colorado, New Mexico, Idaho, Michigan, New York, Illinois, California, Wisconsin, Maine and Missouri. That just gives you an idea. We should add Vermont to that. Recently, we have opened our own wind production in the southern part of the State. But this shows the States right now, the top 20 States, as measured by their energy projections for wind. Obviously, wind is pretty free and there is a lot of it in this country. In fact, there is a lot of it right here in this Chamber, but we do need to better utilize it for a more effective presentation of our efforts to be able to save energy.

Now, let's look at the next chart we have, chart 12. Consider the two quotes on this chart. The first quote reads:

In 1995, worldwide wind-power generation capacity was 4,900 megawatts. . . .

That is 1 million watts. That was China alone.

The second quote reads:

In the past 10 years, PV sales worldwide have more than quadrupled . . . In developing countries, demand has risen significantly, fueled by the recognition that PV systems are an attractive option to rural electrification in isolated, inaccessible communities that are distant from the power—

Sources. Those are photovoltaics. PV is photovoltaics, taking the Sun and converting it, through utilization usually of silicon, to electricity. It is a wonderful source. It is free. It comes from the Sun, and it is increasing worldwide.

As it says here:

In the past years, PV sales worldwide have more than quadrupled . . . In developing countries, demand has risen significantly, fueled by the recognition that photovoltaic systems are an attractive option for rural electrification in isolated, inaccessible communities that are distant from the power grid and have small electric requirements.

This is a tremendous source for exporting our technology and our systems around the world. In fact, when I was in the House, I did get an amendment attached which made demonstration projects at our embassies throughout the world to demonstrate how usable the Sun is to produce power and how effective it is.

In the past 10 years alone, photovoltaic sales worldwide have more than doubled. That is chart No. 12. American renewable businesses are taking advantage of these markets.

Consider this chart, chart No. 13. This chart shows a wind turbine produced by a small wind turbine manufacturer in my State. This turbine was built in Vermont and exported to Ontario, Canada. There is a large market for export of U.S. wind turbines to northern communities in Alaska, Canada and Russia. This is a picture of one. We have several of these in Vermont now. They are throughout the world, and they are not at all offensive. They are quiet. They make a lot of energy. This is a large market for companies in this country.

Although America is still a leader in developing renewable energy technologies, this lead may slip if we lower our renewable research and development funding. Europe and Japan continue to subsidize their renewable industry, putting U.S.-based companies at severe disadvantage.

For example, Japan, Germany and Denmark use tied aid, offer financing and provide export promotion for their domestic industries, and our industries have to compete with that. It is very difficult to do, but because of the success and the fact that we have advantages, they have been able to survive with great difficulty without having that assistance or loans. This is not the time to lose our lead or to cut funding out to this important industry.

Mr. President, there is one final reason why my colleagues should overwhelmingly support this amendment. This amendment is a vote for the environment. Renewable energy is largely free of the pollutants regulated by the Clean Air Act.

Chart No. 14 demonstrates this. Consider this geothermal power plant in Dixie Valley, NV. This plant, which produces electricity for 100,000 people produces no NO_X emissions and 5 percent as much SO_X and CO_2 as a coal-fired power plant of the same size. Five percent, that is 95 percent reduction in the production of those pollutants. We need more of these plants, like the one in Dixie Valley, NV.

Renewable energy can have other environmental benefits as well. Consider the following projects, all of which turn waste products into energy.

Chart No. 15: Westinghouse Power Connection. This one is a biomass gasification test facility in Paia, Island of Maui, HI. A pilot project demonstrates potential to convert agricultural waste—sugar cane—into electricity. Again, back to biomass which has incredible use available to us.

The next chart shows Wheelabrator Shasta Energy Co., a biomass project in Shasta County, CA. This project converts wood wastes that would otherwise end up in landfills into 49 megawatts of electric power.

The next chart—if I am right, we should have 50, one for every State. We will see how we turn out here. This is the BC International Corporation biomass ethanol plant in Jennings, LA. This plant will be retrofitted to produce ethanol from sugar cane, bagasse and rice waste.

The next chart will also demonstrate the number of plants we have spread throughout the country. This is in Connecticut; a fuel cell power plant, Groton, CT. The fuel cell plant uses hydrogen from landfill gas that otherwise would be wasted to create electricity. It is another indication of the tremendous breadth of expertise we have in this Nation to produce. All we have to do is make sure we don't cut back in their planning and ability to create many of the experimental plants.

Let me now conclude by, again, reminding everyone, we are proposing to add $70 million in our amendment to the Department of Energy's solar, wind and renewable budget. Federal support for renewable energy research and development has been a major success story in the United States. Costs have declined, reliability has improved, and a growing domestic industry has been born. More work still needs to be done in basic research at our national labs and applied development to bring down the costs of production even further. This is a tremendous opportunity for this Nation to develop industries which will help us reduce our trade deficits.

This is not a vote which pits Senators from one region of the country against Senators from another region. I think I have shown that all regions of the country benefit from renewable energy. This is not a vote which pits probusiness Senators against proenvironmental Senators. I think I have shown that renewable energy is a clean, environmentally beneficial industry. This is not a vote which pits Democrats against Republicans.

Chart No. 19: Consider this quote from former President Bush in September 1991. President Bush stated:

> We must encourage environmentally responsible development of all U.S. energy resources, including renewable energy. Renewable energy does reduce demand upon our other finite natural resources. It enhances our energy security, and clearly, it protects the environment.

So just before I offer the amendment, I would like to thank my colleagues who are cosponsoring it with me and urge—urge—my colleagues to sincerely consider the tremendous advantages which this amendment will have and to remind you, at present, we are cutting back—while going forward on other less necessary projects—we are cutting back on that which is most critical to the future of this Nation in its ability to gain the semblance of energy independence. We are slipping behind the chart and the goals that we have established. We cannot cut back in the funding that will help us get there.

I ask unanimous consent to have printed in the RECORD a table which sets forth the provisions in the amendment.

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

	Fiscal year 1998	Fiscal year 1999 President	Fiscal year 1999 Committee mark	Mark to 1999 (percent)	Mark to President (percent)	To get to fiscal year 1998	Plus specific adds	Plus 50 percent of what President asked for	Total adds
Solar energy:									
Solar building technology research	2,720	5,000	3,600	+32	−28			260	260
PV energy systems	66,511	78,800	57,100	−14	−27	9,411		6,445	15,856
Solar thermal energy systems	16,775	22,500	17,100	+2	−24		2,000	2,517.5	4,517.50
Biomass—Biopower	28,600	42,900	22,800	−20	−47	5,800		7,150	12,950
Biomass—Biofuels	31,150	46,891	36,213	+16	−44		2,000	2,870.5	4,870.50
Wind energy systems	33,030	43,500	33,200		−24			5,065	5,065
REPI	3,000	4,000	3,000		−25			1000	1,000
Solar program support	0	14,000	4,000	n/a	−71			3,000	3,000
International solar energy program	1,375	8,800	3,400	+247	−61			1,687.5	1,687.5
Solar technology transfer	0	1,360	0		−100			680	680
NREL	1,000	5,000	1,000		−80			4,000	4,000
Construction: 96 E–	2,200	0	0	−100					
Total, solar	186,361	272,751	181,423	−1	−29				
Geothermal	29,500	33,000	18,000	−39	−45	11,500		1,750	13,250
Hydrogen research	16,250	24,000	29,000	+79	+21				
Hydropower	750	4,000	4,000	+533					
Renewable Indian energy resources	4,000	0	4,000		n/a				
Electric energy systems and storage	44,450	38,500	42,500	−4	+11				
Federal building/Remote power initiative	5,000	0	3,000	−40	n/a	2,000			2,000
Program direction	15,651	17,000	15,651		−8			674.5	674.50
Subtotal	301,652	389,251	297,574	−1	−24				
Use of prior year balances			0						
Total	301,962	389,251	297,574	−1	−24	28,711	4,000	37,100	69,811

AMENDMENT NO. 2715

(Purpose: To increase funding for energy supply, research, and development activities relating to renewable energy sources, with an offset)

Mr. JEFFORDS. Mr. President, is my amendment at the desk?

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS], for himself, Mr. HARKIN, Mr. MOYNIHAN and Mr. ALLARD, proposes an amendment numbered 2715.

Mr. JEFFORDS. 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:

On page 21, lines 2 and 3, strike ''$699,836,000, to remain available until October 1, 2000, of which'' and insert ''$758,854,000, to remain available until October 1, 2000, of which not less than $3,860,000 shall be available for solar building technology research, not less than $72,966,000 shall be available for photovoltaic energy systems, not less than $21,617,500 shall be available for solar thermal energy systems (of which not less than $3,000,000 shall be available for the dish/engine field verification initiative), not less than $35,750,000 shall be available for power systems in biomass/biofuels energy systems, not less than $41,083,500 shall be available for transportation in biomass/biofuels energy systems (of which not less than $3,000,000 shall be available to fund the Consortium for Plant Biotechnology Research), not less than $38,265,000 shall be available for wind energy systems, not less than $4,000,000 shall be available for the renewable energy production incentive program, not less than $7,000,000 shall be available for solar program support, not less than $5,087,500 shall be available for the international solar energy program, not less than $680,000 shall be available for solar technology transfer, not less than $5,000,000 shall be available for the National Renewable Energy Laboratory, not less than $31,250,000 shall be available for geothermal technology development, not less than $5,000,000 shall be available for the Federal building/Remote power initiative, not less than $16,325,500 shall be available for program direction,''.

On page 36, between lines 13 and 14, insert the following:

SEC. 3. OFFSETTING REDUCTIONS.

Each amount made available under the headings ''NON-DEFENSE ENVIRONMENTAL MANAGEMENT'', ''URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND'', ''SCIENCE'', AND ''DEPARTMENTAL ADMINISTRATION'' under the heading ''ENERGY PROGRAMS'' and ''CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION (INCLUDING TRANSFER OF FUNDS)'' under the heading ''POWER MARKETING ADMINISTRATIONS'' is reduced by 1.586516988447 percent.

Prior year balances may not be reduced if they are obligated under an existing written agreement or contract to laboratories, universities or industry.

Appropriate use of funds to support meetings and technical conferences are allowed consistent with DOE's mission.

Funding increases for this amendment are for cost-shared RD&D, deployment, and technology transfer via technical and trade associations and allied non-governmental organizations.

Mr. KENNEDY. Mr. President, I strongly support the Jeffords/Roth Amendment to the Energy and Water Development Appropriations Act, which will substantially increase funding for renewable energy programs.

The Jeffords/Roth amendment is critical to an industry that will be at the forefront of energy production in the next century. Renewable energy will bring major economic benefits and major environmental benefits to the nation. This amendment provides us with the opportunity to become leaders in this booming global market.

At the same time, increased renewable energy technology will decrease our dependence on foreign oil and reduce the trade deficit. We will have greater protection from harmful oil price shocks. Funding for renewable energy now will clearly strengthen our competitiveness in the worldwide energy market for the 21st century.

Equally important, the Jeffords/Roth amendment reaffirms the nation's commitment to the environment. Renewable energy enables us to reduce the emissions from other energy sources that are polluting our air and water. It helps to curb the largest current source of pollution in the United States—energy production and energy use. Bringing innovative research from the laboratory to the market will also ensure the protection of our limited natural resources for a sustainable future.

Currently, millions of Americans already obtain electricity from renewable energy sources. These advances are just a hint of the possibilities of cleaner, safer energy production in the years ahead. This amendment allows the U.S. to maintain its leading role in global clean energy technology. I support this amendment, and I commend Senators JEFFORDS and ROTH for their leadership in protecting our environment and our economy.

Mr. LEAHY. Mr. President, I have the pleasure of joining Senator JEFFORDS to rise in support of the renewable energy programs within the Energy and Water Appropriations bill. First, I would like to thank Senator DOMENICI for accepting the Jeffords/Roth amendment to increase funding for these vital programs. With the dramatic changes taking place in the energy sector, our nation is faced with many opportunities to increase our consumption of renewable energy sources. There are two trends in the energy sector converging to make this change possible—utility restructuring and decreasing costs for renewable energy.

In my home State of Vermont, renewable technology companies are building wind turbines that are used in Europe, the Far East and South America. Unfortunately, the United States is behind much of the world in adopting wind and other renewable energy technology. Much more work needs to be done to spur the utilization of renewable energy. Although the cost of renewable energy has decreased significantly over the last decade, it still must compete against the artificially low cost of fossil energy. As we see the level of mercury and other heavy metals increase in our lakes while the views of our mountains are obscured by air pollutants—the need to find alternative sources of energy becomes all the more vivid.

Recent articles have highlighted the public's interest in maintaining renewable power as an option for meeting their energy needs. The last two decades have witnessed a decline in the cost of renewable energy. Research by the Energy Department and the commitment of private energy companies has produced this decline. As a nation, we must build upon this partnership and encourage the private sector to continue to develop cost-reducing technology. Unfortunately, the recent trend in federal research funding has not supported this partnership.

Wind Energy Research and development program has been extraordinarily successful in bringing down the cost of wind-generated electricity. To allow expansion of this large resource base, and to allow wind energy to be competitive in an era of utility restructuring that emphasizes low initial cost and independent power projects, significant improvements to the technology are still needed to reach the Program's goal of 2.5 cents per kilowatt by 2000. In addition, research and analysis relating to restructuring in the electric utility industry should be conducted on issues associated with integration of wind and other renewable energy systems into an increasingly competitive industry framework.

Vermont is also leading the country in the deployment of biomass technology—both large and small. We are proud that the Department of Energy selected the McNeil Plant in Burlington to conduct a full scale demonstration of biomass gasification. In February, the project made history when the plant produced gas for fuel from wood chips. The effort at McNeil to demonstrate how our country can produce energy from renewable crops makes sense to Vermonters who have already embraced biomass as a renewable source of energy. Twenty State office buildings and eighteen schools use biomass for heat during the winter.

By increasing funding for renewable energy by $65 million, the Jeffords/Roth amendment will help us make this leap. Mr. President, this amendment makes sense for our future and our children's future. Our children should be able to enjoy sustainable, clean and renewable energy.

Mr. REID addressed the Chair.

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

Mr. REID. I compliment and applaud the Senator from Vermont and those who have joined in this amendment. As we have said earlier, the administration recommended a higher level for this particular program—solar and renewable. The movers of this amendment have also recommended that this

body move higher with solar and renewable. I think that their efforts are certainly to be congratulated.

It is a very difficult bill, as we have explained on other occasions. There is a limited amount of money to do a number of different things. The Senator from Vermont has done a very good job of explaining the importance of renewable energy in this country. Of course, he mentioned a number of programs in Nevada that are important. We have geothermal. We have solar that we are working on. So we certainly look forward to working with him on this amendment.

I am waiting for the manager to come back. I think there is a good chance we may accept this amendment. I know it is acceptable on this side.

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. JEFFORDS. 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. JEFFORDS. Mr. President, after discussions with the chairman of the subcommittee and the ranking member, I understand that we are in a position where the amendment can be accepted with striking a certain provision. I am doing that and am going to accept that proposition with the understanding that there will be a strong effort to fight to maintain the amendment as best they can in the committee of conference, because the history has been that on these amendments, which have been accepted in the past, they kind of disappear in conference. But I have the good-faith-effort commitment of the Senator from New Mexico, and I accept that, as I know him and I know his character; and the same with the Senator from Nevada.

So, Mr. President, I now move to amend my amendment by striking all after line 8 on page 3 of the amendment.

Mr. DOMENICI. Would you not do that for a moment?

Mr. JEFFORDS. I withdraw my request.

Mr. DOMENICI. I don't want any misunderstanding. I don't want the Senator withdrawing that based upon a unilateral statement that he has made.

I think I must make my statement in the RECORD.

Mr. JEFFORDS. I appreciate that.

Mr. DOMENICI. Then the Senator can do whatever he wants—leave it in and we have a fight or take it out and we accept it.

Mr. President, I am not committing that I will return in the conference with this fully funded. I don't know that I can do that. What I am suggesting is I will do my dead-level best. I don't go there with the intention of throwing the amendment away. I go there intending to try to see if we can fund it. I have every confidence that we will find some money to exceed what is in the bill. Now, whether it can be exactly this amount or not, I have no idea at this point. That will be the dynamics, and a lot of things in the amendment that are very difficult that I am not agreeing to right now.

I am agreeing to accept the amendment and we will take it to conference on those terms. The Senator can rely on what I have just said.

With that, if he will remove the handwritten part that was added, that is fine. If he does not want to, then clearly I don't have any reluctance to having a full-blown debate on this amendment today. I have plenty of time. I don't want to do that if we can get it done the way we have just talked about, otherwise we will just proceed.

Mr. REID. Mr. President, I have already said that I appreciate the offer of the amendment by the Senator from Vermont and the statement by the Senator from Delaware.

I have indicated that Senator DOMENICI and I have had and will work to increase the number that we have in this bill. We have all been to conferences and we will do the very best we can. I believe in these programs. I think it would be to everyone's interest that we go ahead on that basis. I don't think it would serve anyone's interest, after we have agreed to accept this amendment, to now have a full debate on it. If, in fact, my friend from Vermont wants one, we can do that. There are things in the program we can all talk about that I think would be better left for a later time.

But I will do my share with the chairman of the subcommittee, with those of us on this side of the aisle in the conference, to do everything we can to raise the number as high as we can.

The PRESIDING OFFICER. Does the Senator wish to modify his amendment?

Mr. JEFFORDS. I want to, first of all, make a comment or two. I thank both the leaders on this bill. I respect their comments. I also know that you cannot promise anything when you get into conference, but I will also be watching very carefully because in the past we have not had any success in holding these amendments.

I understand, though, that the administration is strongly in favor of more funding. I understand there may be additional funding in the health provision, so I expect that we will be able to get a significant increase at this time.

AMENDMENT NO. 2715, AS MODIFIED

Mr. DOMENICI. Has the modification taken place?

The PRESIDING OFFICER. The modification has not taken place yet.

Mr. JEFFORDS. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, (No. 2715) as modified, is as follows:

On page 21, lines 2 and 3, strike ''$699,836,000, to remain available until October 1, 2000, of which'' and insert ''$758,854,000, to remain available until October 1, 2000, of which not less than $3,860,000 shall be available for solar building technology research, not less than $72,966,000 shall be available for photovoltaic energy systems, not less than $21,617,500 shall be available for solar thermal energy systems (of which not less than $3,000,000 shall be available for the dish/engine field verification initiative), not less than $35,750,000 shall be available for power systems in biomass/biofuels energy systems, not less than $41,083,500 shall be available for transportation in biomass/biofuels energy systems (of which not less than $3,000,000 shall be available to fund the Consortium for Plant Biotechnology Research), not less than $38,265,000 shall be available for wind energy systems, not less than $4,000,000 shall be available for the renewable energy production incentive program, not less than $7,000,000 shall be available for solar program support, not less than $5,087,500 shall be available for the international solar energy program, not less than $680,000 shall be available for solar technology transfer, not less than $5,000,000 shall be available for the National Renewable Energy Laboratory, not less than $31,250,000 shall be available for geothermal technology development, not less than $5,000,000 shall be available for the Federal building/Remote power initiative, not less than $16,325,500 shall be available for program direction,''.

On page 36, between lines 13 and 14, insert the following:

SEC. 3___ OFFSETTING REDUCTIONS.

Each amount made available under the headings ''NON-DEFENSE ENVIRONMENTAL MANAGEMENT'', ''URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND'', ''SCIENCE'', and ''DEPARTMENTAL ADMINISTRATION'' under the heading ''ENERGY PROGRAMS'' and ''CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION (INCLUDING TRANSFER OF FUNDS)'' under the heading ''POWER MARKETING ADMINISTRATIONS'' is reduced by 1.586516988447 percent.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOMENICI. Mr. President, we have no further debate on the amendment. We are going to accept it.

I will make a little comment about what happened to the budget from the President of the United States as it pertains to this bill. First of all, the President of the United States, in the budget he submitted to the U.S. Congress, is responsible for the fact that we don't have enough money to do the renewables that the distinguished Senator from Vermont comes to the floor and adds money for. The President of the United States took the water projects of this country—and these are not pet projects, these are the ports that have to be dredged in our country, dams that have to be built for flood protection, just a whole litany of them everywhere—he cut them $1.3 billion.

Frankly, all I can see in that kind of a cut is that he expected us to put the money back because we could not have kept the Corps of Engineers together with their projects out across our land. We could not have kept a viable program. Mr. President, $1.3 billion is a dramatic cut from what was needed for funding at the acceptable rate that the

projects were in last year—not new ones. That money makes up the same pot of money from whence comes all of the DOE's nondefense research projects and all the water projects.

So we start off with that one pot of money, short $1.3 billion, and the President picked and chose what he would like to increase. As a matter of fact, he increased certain water projects that he has been for and forgot about the water projects that the rest of the Congress has been for, including very important projects.

Now, in order to get around that, we had to find money from places that he had dramatically increased. Even at that, we only funded those projects at between 60 and 70 percent, meaning it will cost us more money in the long run, the projects will be delayed, and some of them are very big, important projects for commerce such as ports that are to be dredged, with facilities to be built.

It wasn't, when we put this bill together, that with some kind of gusto we set about to dramatically reduce the programs that are the subject matter before the Senate right now. It was that we had an obligation to fund that fund at 60 or 70 percent. That is all we could do for the myriad of water projects across this land which have a tremendous economic impact and which save much property and save much life when they are completed.

Now, that puts in the position we are when we come to the floor here. Everybody understands that we are not going to have it much easier in conference, although thanks to the chairman of the Appropriations Committee a little more money was allocated to this committee than the President's budget because of the water project dilemma that I have just described.

Now, that is the essence of why this bill has difficulty. It is not even funded in many areas as high as it was last year. Certainly, the water projects don't have sufficient resources to stay on the course that was there. That was the best course, the optimum course, in terms of efficiency and getting the projects done so that we would save lives and save property at the earliest time.

Having said that, with no objection from the ranking member on the other side, we will accept this amendment and do our very best in conference to see that solar energy and the items mentioned in the amendment, that the funding is increased from what we had in our bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2715), as modified, was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

Mr. REID. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. I thank Senator JEFFORDS for his cooperation.

Mr. JEFFORDS. I thank the chairman of the committee as well as the ranking member for their assistance in this. I am hopeful we are making an important step forward here in our energy self-reliance.

I yield the floor.

Mr. DOMENICI. Mr. President, in stark contrast to the last 3½ weeks, this bill is moving along very rapidly. I announce to the Senate that we can, indeed, finish this bill by midafternoon. The amendments that we are aware of that have come either through the minority, through my good friend, Senator REID, or through our side, are being worked on and we don't think there is a rollcall vote necessary on any of those. There is one amendment that the distinguished Senator from Indiana, the junior Senator from Indiana, intends to offer. It is not related exactly, to this bill, but he indicates that he will be here about 2 o'clock.

In the meantime, we are going to try to work on the amendments we have and see if we can put a package together and accept them. That will be all we will have until 2 o'clock, unless some Senator has some amendment of which we are unaware.

I really want to make sure that everybody knows I have checked with the leader. He knows of no other business on this bill, and he wants to finish this afternoon. By 2 o'clock I hope we can have the Indiana Senator call up his amendment. Again, I indicate that is the last amendment we know about.

Mr. REID. Mr. President, we would like to go to third reading early this afternoon. I say, also, to elaborate on what my friend from New Mexico says, there has been a lot of partisan rancor on this floor the last several weeks. But as I said when we introduced this bill yesterday, there are times on this Senate floor—a lot more often than people are led to believe—when things move along very well, in a bipartisan fashion. There is no better example of that than every year when we get to the appropriations bills. Sometimes we have partisan problems, but not often. I think the two leaders of this Appropriations Committee, the senior Senator from Alaska and the senior Senator from West Virginia, have set a very good tone as to how we should move on these bills. They work very well together, and they have for many years. The Senator from New Mexico and I have worked together for a number of years on this bill.

This is a good bill, a very important bill for this country, not only for domestic purposes, water projects, but also for the security of this Nation. Much of what is in this $21 billion appropriations bill deals with security of this Nation, our nuclear arsenal—the safety and reliability of our nuclear arsenal.

So I say to my friends in the Senate that not everything we do is partisan in nature. There are certain things that rise above that. This bill is one of those times when partisanship should have no bearing, as it hasn't in the last several years.

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. DOMENICI. 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. DOMENICI. Mr. President, I have already stated for the RECORD and for the Senators what the situation is on this bill.

The managers' staffs are working on a managers' wrap-up amendment, which we think we can have done by 2 o'clock. Senator COATS will be here to offer an amendment. There will be nothing we can do until 2 o'clock.

MORNING BUSINESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business until 2 p.m., with Senators permitted to speak therein for up to 10 minutes each.

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

AMBASSADOR BILL RICHARDSON TO BECOME SECRETARY OF ENERGY

Mr. REID. Mr. President, today an announcement was made by the President that we are going to have a new Secretary of Energy, Bill Richardson, a former Congressman from the State of New Mexico, now our ambassador to the United Nations.

In 1982, I came to the Congress with Bill Richardson. We were both in the class of 1982. He had a long and distinguished career in the House where he served honorably on a number of committees, including Commerce. Of course, during the time he was a Member of the House of Representatives, he did some very unusual but very important diplomatic maneuvers—freeing various people held as political prisoners, and other efforts, which were extremely important, not only to this country but for world peace. The President had recognized that and he selected Bill Richardson to be our ambassador to the United Nations, where he has served honorably.

The need for former Congressman Richardson, now Ambassador Richardson, to return to Washington has been noticed by the President. As a result of Secretary Pena retiring, we now have a tremendous need for someone who understands Washington, and certainly Bill Richardson does that; someone who understands Government, and certainly Bill Richardson does understand Government; someone who has an understanding of the importance of the Energy Department, and Bill Richardson has that understanding based upon

his being from New Mexico where so much dealing with things nuclear have taken place for the last 60 years.

So, Mr. President, I am elated and enthused about the new Secretary Richardson. He has big shoes to fill, as Secretary Pena has done an outstanding job. Secretary Pena has approached his job in a bipartisan fashion. Even though he is part of this administration, he has reached out to Chairman DOMENICI and the ranking member of this subcommittee in trying to be fair and reasonable in his approach to issues that are so important to this country and to the world.

I applaud and commend the administration for selecting Bill Richardson to be the next Secretary of Energy.

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

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

CONGRATULATING THE DETROIT RED WINGS ON WINNING THE 1998 STANLEY CUP

Mr. LEVIN. Mr. President, I rise to speak on S. Res. 251, which has been introduced by myself and Senator ABRAHAM, which I am confident will be passed later on today. This resolution congratulates the Detroit Red Wings for their second successive Stanley Cup victory. Tuesday night, the Red Wings defeated the Washington Capitals 4 to 1. This is the second time in 2 years that the Red Wings have swept the Stanley Cup finals—four straight.

In perhaps the most moving and memorable moment of the evening, after the victory, the Stanley Cup was placed in the lap of Vladimir Konstantinov, who was injured after last year's Stanley Cup victory in an automobile accident. I have come to know Vlady and his wife Irina during this past year, when they have recovered, at least partly, from that terrible tragedy of a year ago. What is extraordinarily moving is the way the Red Wings—indeed, all the Red Wings' fans—have become a closer family as a result of that accident, the way they have surrounded Vlady with love and support. The whole town—indeed, our whole State and to some extent the entire country—has come to the support of Vladimir Konstantinov. When he was pushed in his wheelchair around the ice at the MCI Center on Tuesday night, with the Stanley Cup in his lap, surely we reached a new height in terms of what family means and what family is all about.

The Red Wings have surely the greatest hockey fans on Earth. Detroit lives and breathes hockey, and there are a legion of fans all over our State and throughout the country who came to the MCI Center on Tuesday night. There was a sea of red shirts in the stands. I was one of those who had the pleasure of being there to see this very, very special victory. I also, though, want to not just pay my respects and appreciation to the players who brought home the cup again, and the Konstantinovs and those who supported that team, but also to the Caps fans who treated the Red Wings fans in the audience with such decency and civility.

I have been to a lot of Red Wings games away from home where that was not true, where the opponents' fans, indeed, were quite hostile to their opponents. But on Tuesday night, as was true on Saturday night, the Caps fans treated us very, very civilly indeed. And when it came that moment, that very magic moment in the third period when the fans were serenading Vlady, who was sitting up with Irina in the stands, the Caps fans joined with the Red Wings fans in the arena singing, ''Vlady, Vlady, Vlady.'' That was also a moment I will always remember and cherish. Our captain, Steve Yzerman, won the Conn Smythe Trophy, deservedly so. He has been an extraordinary role model for so many young players, as Detroit Red Wings before him were role models for him.

Speaking just for one more moment on that subject, when I was young and my brother Sander was young, we used to go down to Olympia frequently with my mother, going up to the cheapest seats available, three flights up in the balcony, where we rooted for an earlier generation of great Red Wings, the so-called Production Line of Sid Abel, Gordie Howe and Ted Lindsay, and our great goalie Terry Sawchuck in those years, in the fifties, who brought home the Stanley Cup on many occasions to Detroit.

That has happened again this week. The Red Wings fans, perhaps a million of them, have just finished celebrating in a parade down Woodward Avenue from the Fox Theater to the Hart Plaza. The Hart Plaza, by the way, is named after a former U.S. Senator, one who touched the hearts and the souls of this body, Phil Hart. The place where that parade started was the Fox Theater, and it was very appropriate that that be the place because that theater has been restored by the Ilitchs, Mike and Marian Ilitch, who are the owners of the Detroit Red Wings. I only wish I could be there to greet my friends the Ilitchs in person today, to thank them again for what they have done for our city. But how sweet that victory was, how moving that victory was, how important these events are in terms of gluing our communities together, bringing us together as family.

With the shouts of, ''Go, Wings, go!'' still ringing in my ears, they now can savor the victory of a Stanley Cup. Just as their names are engraved on that cup, so their names will be engraved in this resolution when it passes, after Senator ABRAHAM has an opportunity to get to the floor.

With that, I yield the floor and 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. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

Mr. DORGAN. Mr. President, I understand that we are in morning business. However, the pending business, beginning at 2 o'clock, is the Energy and Water appropriations bill. I will make a couple of comments about the legislation brought to the floor by Senator DOMENICI and the ranking member, Senator REID.

I am a member of the Subcommittee on Energy and Water, and I support this piece of legislation. I think Senator DOMENICI and Senator REID have done a wonderful job. I understand that a lot of the details of this legislation will not be discussed at great length today, but I want to mention a couple of things in this bill just for purposes of alerting people that there are some significant problems that are being addressed, especially in the State of North Dakota, in this legislation.

One piece of this legislation deals with funding for something called the Garrison Diversion Project. Now, that is a foreign language to most people, and no one really would be expected to know much about the Garrison Diversion Project in North Dakota. But I want to give some history, just for a few brief minutes, about this project and why it is important.

Many years ago, the Missouri River—which was an aggressive, large river coming out of the mountains in Montana—was untamed, and during the spring flooding it would race down over its banks, and in the lower regions of the Missouri River down in Kansas City and elsewhere you would have massive flooding, flooding, in fact, all the along the way, including cities in North Dakota. It became a huge problem. Federal officials said let us try to harness the Missouri River with a series of dams. They proposed a series of ''stem'' dams on the Missouri River and one would have been in North Dakota.

In the 1940s, the Federal officials said the folks downstream want the river harnessed so it won't flood, so they don't have all the problems downstream. What we would like to do is build a dam in your State. We would like to have a flood come to your State—behind the dam—that comes and stays forever. The flood in your State of North Dakota will be a 500,000-acre flood about the size of the State of

Rhode Island. So they said to North Dakotans—in the 1940s—if you will allow us to put a permanent flood in your State by building a dam and damming up the water behind it, put a permanent flood that comes and stays forever in your State, we will give you the ability to move that water behind that dam in that reservoir around the State for a whole range of important purposes, including municipal, rural and industrial water needs.

People of North Dakota thought, that is not a bad deal. We will accept the flood that comes and stays forever, but then we will get this promise from the Federal Government of being able to take water from behind that dam and moving it around the State to improve water supplies to farmsteads, cities and so on in North Dakota, to provide water for industrial development and a whole range of things that will create more economic growth in the State.

So they built the dam. President Eisenhower came out and dedicated the dam. Then they created the flood. So the dam is there, the flood came, the flood stayed, and we have a Rhode Island-size flood in our State forever.

So we got the cost, we are now hosts to a permanent flood, but we have not yet gotten all of the benefits. And that is what the Garrison Diversion Project and the funding in this bill is about.

With the consent of the Presiding Officer, I will show my colleagues, or at least provide a demonstration today for those watching, the quality of water that we are talking about in some of our communities.

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

Mr. DORGAN. Mr. President, I brought to the floor a little container of water. Now I know this looks very much like coffee. It is not coffee. It is well water from a well at Keith and Ann Anderson's place in North Dakota. The water that comes from that well, looking like the color of coffee, is water that will be replaced by water behind the Garrison Dam from the Missouri River.

That new water, the fresh water, coming out of the mountains from Montana in that large reservoir now in North Dakota can be moved around our State and can replace this water and we will have safe, wholesome and healthy drinking water in communities and on farmsteads in our State.

That is one part of this project. This chart shows what I have just showed a moment ago, the color of some of this water, the quality of the water that is being used, forced to be used in some communities, in some farmsteads in North Dakota and why we must find a supplemental supply for it. That is what this project is about. Water delivered to rural North Dakota by pipeline behind the reservoir looks like this clear water, and it replaces this brown water.

Is that good for people's health? Of course it is. Is it good for our State? Is it a good investment in our future? Of course it is. Is it, more importantly, keeping a promise to a State that got the cost of a flood that comes and stays, keeping the promise to be able to use that water for economic development for our future? Yes, that is an important promise for this government to keep. For that, I appreciate the work of the Senator from New Mexico and the Senator from Nevada today on this piece of legislation.

I will make a point about one additional provision in this legislation dealing with some construction money for what is called an emergency outlet at Devils Lake, ND. I show a photograph that was taken in 1965. This is a woman standing next to the bottom of a telephone pole. She is looking up to the top of the pole. The pole actually ended about here. This lake, is now way up to here, far, far above her head. This is Devils Lake, which is part of a basin the size of the State of Massachusetts. It is one of two closed basins in the United States. One is the Great Salt Lake and one is Devils Lake.

In this basin the water runs down, just like any funnel, except there is no place for it to go. This lake has gone up and up and up. You can see, relative to this picture in 1965, where the water is today. This graph shows it even better. It shows what has happened over 150 years with respect to the water level. It is at 1,445.5 feet now. The cumulative damages from all of this are substantial: hundreds of millions of dollars, threatening people's homes, inundating farmland, threatening cities. This has been a huge problem, and there is no obvious solution for it—at least there is no one obvious solution.

We are working on a range of things to try to resolve and respond to this issue: No. 1, upland storage, up in the upper part of the basin, to store water so it doesn't flow down to the lake, building dikes to protect cities; No. 3, raising roads, which is expensive, we have had to raise roads and then raise them again; No. 4, an emergency outlet to try to take some pressure off of that lake—an emergency outlet that would go over to the Sheyenne River. That is what is in this piece of legislation—another component of financing for an emergency outlet from Devils Lake.

I know for those who have never seen or heard of Devils Lake that this doesn't mean very much. But this means almost everything to the people in the region and who are now threatened every day by this lake that continues to rise. The lake has doubled in size and tripled in volume in just a few short years. It now threatens a very substantial city in our State, cripples an economy, inundates roads, and it is a very, very serious problem.

The piece of legislation before us provides another increment of construction funding for an emergency outlet. The outlet would not be huge; it would not be an outlet sufficient to let a lot of water off of the lake. But the outlet would remove a foot to a foot and a half a year of water from the lake depth. Marginally, over a period of years, it would help to take some pressure off of that lake.

So that is the story of these two projects. Once again, I wanted to simply indicate that both of them are very important. We have had the cooperation of the chairman of the subcommittee, the ranking member, and others, on the appropriations subcommittee, to get some funding for both of these projects. Both projects will be good investments in our country and in our country's future.

I commend the Chairman of the Energy and Water Subcommittee, Mr. DOMENICI, and the ranking member, Mr. REID, for the consideration given to the people of North Dakota in the Fiscal Year 1999 Energy and Water Appropriations bill. The people of North Dakota are most thankful for the Appropriations Committee's support of the state's priority water projects, particularly the Devils Lake emergency outlet and the Garrison Diversion project.

I am privileged to serve on the Subcommittee and I note that Senator DOMENICI, in his statement before the Full Committee, remarked that he was able to provide only between 60–70 percent of the optimal funding level for water project construction in this bill. He faced enormous difficulties in this bill brought on by a budget request which was $1.8 billion below the level required to continue ongoing construction projects at their optimal level.

In the face of these difficulties, the Subcommittee supported funding for an emergency outlet from Devils Lake—a body of water that normally has no natural outlet. It's a body of water that is rising inexorably and with a vengeance, displacing people, rendering formerly productive fields and roads useless. The devastating flooding in the Devils Lake region is very similar to recent flooding at Salt Lake, Utah—the other major closed basin in the United States.

A headline this week from a local newspaper reads: ''Economic costs of Devils Lake flood are staggering.'' More than 170 homes have had to be moved. Damage to roads, bridges, and other property is estimated at around $250 million. And 70,000 acres of prime land have disappeared. The long-term effects of this flood emergency on personal incomes, on regional agriculture and local businesses, and on the local tax base are as yet undetermined. But the short-term impacts are unmistakable as bankruptcies multiply, farm auctions become routine, and local governments scratch to pay for mounting costs with dwindling revenues.

The Senate Subcommittee and Full Committee honored the President's request for funding to address this emergency. Some predictions are that the lake could keep on rising and eventually spill into the Sheyenne River, resulting in a flood of unknown magnitude, but sure to result in the loss of

key roads, vital infrastructure and thousands of acres of farmland. Such an uncontrolled outflow from the east end of the lake, with extremely high levels of dissolved solids, would create environmental havoc for the water supplies of downstream communities.

For these reasons and others, the Committee wisely provided additional funding for an emergency outlet from the west end of the lake, where water quality is compatible with the Sheyenne River. Controlled releases would also be managed so as to avoid any downstream flooding.

I would further point out to my colleagues that the project must meet tough fiscal and engineering tests, besides complying strictly with the National Environmental Policy Act and the Boundary Waters Treaty of 1909. The latter requirement involves full consultation with the International Joint Commission in order to address potential concerns of the Government of Canada.

Finally, let me emphasize that the appropriation for an outlet bars the use of these funds to build an inlet to Devils Lake. Despite the lingering fears of some interests, neither the FY 1999 appropriations nor the prior appropriations would allow for an inlet. Moreover, pending legislation to revise North Dakota's main water development project, the Garrison Diversion Unit, includes no provision for either an inlet to or an outlet from Devils Lake. This reflects a joint determination by the bi-partisan elected leadership of North Dakota on how to proceed with these projects.

This FY99 funding bill also addresses another emergency situation near Williston, North Dakota. There again rising waters are threatening to render useless thousands of acres of farmland in the Buford-Trenton project and to displace farmers. The funding provided by the Senate will allow for the purchase of easements which are authorized under the Water Resources Development Act of 1996. This is another extremely important project which the Senate has supported at a reasonable level.

The Subcommittee has added $6 million to the budget request the Garrison Diversion project, in order to meet the federal responsibility for critical water development needs in our state. Let me state that the key to economic development in North Dakota is water development and that the key to water development is the Garrison Diversion project.

Let me illustrate the importance of this project. Garrison funding will ensure that Indian tribes can provide clean drinking water to tribal members that often have to use some of the worst water in the nation. It will also deliver reliable water supplies for irrigation, industry, and residential use in semi-arid regions of the state and to communities whose normal drinking water looks more like tobacco juice. Moreover, the bill will continue to support environmental enhancements and wildlife habitat by means of such Garrison programs as the Wetlands Trust.

In a word, the Garrison funding will help to fulfill the federal commitment to develop a major water project in North Dakota to compensate the state for the loss of 500,000 acres of prime farmland. This land was flooded behind the garrison Dam in order to offer flood protection and inexpensive hydro power to states downstream.

I would also advise my colleagues that North Dakota's elected leaders are working on legislation to revise the Garrison project to meet the state's contemporary water supply needs in a fiscally and environmentally responsible way. The Garrison revision bill will refocus the project to provide municipal, rural and industrial water supplies to regional water systems, Indian reservations, and the Red River Valley while enhancing fish and wildlife habitat.

Finally, the bill before the Senate has supported funding which will allow the Army Corps of Engineers to proceed on a long-term flood protection plan for the city of Grand Forks, North Dakota on the Red River. Approximately one million dollars included will be used for preparatory studies and planning of the permanent levees to protect the sister cities of Grand Forks, North Dakota and East Grand Forks, Minnesota that were devastated in the catastrophic floods of 1997.

My purpose today is to thank the leadership of the Energy and Water Subcommittee, and the Full Committee leadership, Mr. STEVENS and Mr. BYRD, for addressing in this bill projects of critical importance to North Dakota. Their leadership is appreciated.

Mr. President, I yield the floor and 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. LEAHY. 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. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is currently in morning business, and Senators are permitted to speak for up to 10 minutes.

DELAYS IN SENATE ACTION ON JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, just a couple of weeks ago, I commented in the CONGRESSIONAL RECORD on the Senate majority's poor record in acting on judicial nominees, especially noting those judicial nominees who are either minorities or women. I included a recent letter from the Congressional Hispanic Caucus, which calls upon the Senate Republican leadership to allow votes on the Latino judicial nominees who have languished in the Senate for far too long.

I have also spoken often about the crisis in the second circuit and the need for the Senate to move forward to confirm the nominees to that court who are pending on the calendar. Judge Sonia Sotomayor is just such a qualified nominee, and she is one being held up by the Republican majority, apparently because some on the other side of the aisle believe she might one day be considered by President Clinton for nomination to the U.S. Supreme Court, should a vacancy arise.

Last week, a lead editorial in the Wall Street Journal discussed this secret basis for the Republican hold against this fine judge. The Journal reveals that these delays are intended to ensure that Sonia Sotomayor not be nominated to the Supreme Court, although it is hard to figure out just how that is logical or sensible.

In fact, how disturbing, how petty, and how shameful: Trying to disqualify an outstanding Hispanic woman judge by an anonymous hold.

I have far more respect for Senators who, for whatever reason, wish to vote against her. Stand up; vote against her. But to have an anonymous hold—an anonymous hold—in the U.S. Senate with 100 Members representing 260 million Americans, which should be the conscience of the Nation, should not be lurking in our cloakrooms anonymously trying to hold up a nominee. If we want to vote against somebody, vote against them. I respect that. State your reasons. I respect that. But don't hold up a qualified judicial nominee.

I was asked last week by Neil Lewis of the New York Times about this circumstance. He correctly reported my response in a front page story this last Saturday. I am offended by this anonymous effort to oppose her prompt confirmation by stealth tactics. Here is a highly qualified Hispanic woman judge who should have been confirmed to help end the crisis in the Second Circuit more than three months ago.

The times Argus recently included an editorial entitled ''Partisan Nonsense'' on this hold. The editorial notes that Judge Sotomayor rose from a housing project in the Bronx to Princeton, Yale and a federal court appointment by President Bush, a Republican. The editorial notes that the stalling tactics are aggravating the judicial emergency faced by the Second Circuit caused by judicial vacancies for which the Republican leadership in the Senate refuses to consider her, and another worthy nominee. The editorial concludes by urging me to make ''a lot of noise over this partisan nonsense.''

I don't always follow the editorials in my home State. But this one I am happy to follow.

I will continue to speak out on behalf of Judge Sotomayor and all the qualified nominees being stalled here in the U.S. Senate.

Judge Sotomayor in not the only woman or minority judicial nominee

who has been needlessly stalled. Indeed, if one considers those nominees who have taken the longest to confirm this year, we find a disturbing pattern:

Hilda Tagle, the only Hispanic woman the Senate has confirmed this year, took 32 months to be confirmed as a district court judge for the Southern District of Texas. That is more than two-and-one-half years.

Judge Richard Paez, currently a district court judge and a nominee to the Ninth Circuit, was first nominated in January 1996. Twenty-nine months latter, Judge Paez's nomination remains in limbo on the Senate calendar.

Nor have we seen any progress on the nomination of Jorge Rangel to the Fifth Circuit or Anabelle Rodriquez to the District Court for Puerto Rico, although her nomination was received in January 1996, almost 29 months ago.

For that matter, we have seen the President's nomination of Judge James A. Beaty Jr., the first African American nominated to the Fourth Circuit, stalled for 30 months, since December 1995. The situation in the Fourth Circuit was the topic of a Washington Post editorial past Saturday. We have seen the attack on Judge Frederica Massiah-Jackson, who would have been the first African-American woman to serve on the Eastern District of Pennsylvania, but who was forced to withdraw. We have seen the nomination of Clarence Sundram held up since September 1995, almost 33 months.

In his annual report on the judiciary this year on New Year's Day, the Chief Justice of the United States Supreme Court observed: ''Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994.'' He went on to note: ''The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.'' Which of course is absolutely correct.

For some unexplained reason, judicial nominees who are women or racial or ethnic minorities seem to take the longest in the Senate. Of the 10 judicial nominees whose nominations have been pending the longest before the Senate, eight are women and racial or ethnic minority candidates. A ninth has been delayed in large measure because of opposition to his mother, who already serves as a judge. The tenth is one who blew the lid off the $1.4 million right-wing campaign to ''kill'' Clinton judicial nominees.

Pending on the Senate calendar, having been passed over again and again, are Judge Sonia Sotomayor, Judge Richard Paez, Oki Mollway and Ronnie White. Held up in committee after two hearings is Clarence Sundram. Still without a hearing are Anabelle Rodriquez, Judge James A. Beaty Jr., and Jorge C. Rangel. What all these nominees have in common is that they are either women or members of racial or ethnic minorities.

Acting to fill judicial vacancies is a constitutional duty that the Senate—and all of its member—are obligated to fulfill. In its unprecedented slowdown in the handling of nominees in the 104th and 105th Congresses, the Senate is shirking its duty. The Senate majority's choices as they stall Hispanic, women and minority nominees is wrong and should end.

Mr. President, I have served here for nearly 24 years. I know Members of the Senate. I have enormous respect for so many of them, Republicans and Democrats alike. The vast majority of Senators I have served with do not have any bias or ethnic bias against people. They do not have a religious bias. They do not have a gender bias. But somehow ethnic and gender biases have crept into the stalling of these nominations.

If Senators are opposed to any judge, bring them up and vote against them. But don't do an anonymous hold, which diminishes the credibility and respect of the whole U.S. Senate.

I have had judicial nominations by both Democrat and Republican Presidents that I intended to oppose. But I fought like mad to make sure they at least got a chance to be on the floor for a vote.

I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.

If we don't like somebody the President nominates, vote him or her down. But don't hold them in this anonymous unconscionable limbo, because in doing that, the minority of Senators really shame all Senators.

With that, Mr. President, I see Senators have come back to the floor for their debate. So I ask unanimous consent that copies of the editorials of the Times Argus and the Washington Post, and the report from the New York Times, which I referred to, be printed in the RECORD.

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

[From The Times Argus, June 15, 1998]

PARTISAN NONSENSE

You may never have heard of a federal district judge named Sonia Sotomayor, and it appears that several key Republicans are hoping you never will. They'd like her to simply vanish from the nation's political radar screen, but Vermont's Sen. Patrick Leahy is among those who stand in their way.

It appears these political foes of President Clinton are afraid that if they confirm Judge Sotomayor's nomination to the 2nd District U.S. Circuit Court of Appeals, as Clinton has proposed, her next stop will be a seat on the United States Supreme Court.

Although Sotomayor grew up in the sprawling housing projects of the Bronx, where success stories are less than commonplace, she managed to graduate with high honors from Princeton, become editor of the Yale Review and earn a reputation as an effective federal prosecutor.

In 1992, she was appointed to the federal bench by then-President George Bush. That would seem to suggest she had bipartisan support, but that was before some nervous Republicans began to fear there may soon be an opening on the Supreme Court. That opening, they worried, would allow Clinton to nominate Sotomayor, a woman and an Hispanic.

Of course there is no vacancy on the high court, nor has there been any clear signal that there will be one any time soon. Justice John Paul Stevens, who many believe will be the first of the present batch of justices to retire, has already hired his clerks for the next court session. In addition, Sotomayor's name was not on a list of recommended nominees the Hispanic National Bar Association submitted to Clinton.

But even if there was a pending vacancy, what is it about Judge Sotomayor that would make Republicans so worried? Is it that she's Hispanic? Is it that she's too liberal, or too much a judicial activist?

For the record nobody is saying, but off the record, some Senate aides concede their bosses are worried she would, indeed, be an activist. Interestingly, conservative supporters of Judge Sotomayor's nomination vehemently disagree with that assessment.

Enter Sen. Leahy, the senior Democrat on the Judiciary Committee. In blunt terms, Leahy has criticized the Republicans who, behind the scenes and not for attribution, are seeking to scuttle Sotomayor's nomination.

''Their reasons are stupid at best and cowardly at worst,'' Leahy told a New York Times reporter. ''What they are saying is that they have a brilliant judge who happens to be a woman and Hispanic and they haven't the guts to stand up and argue publicly against her on the floor. They just want to hide in their cloakrooms and do her in quietly.''

Those are strong words, particularly for the United States Senate, but Leahy's anger is genuine and justified.

The campaign against Judge Sotomayor began on the editorial pages of the ultra-conservative Wall Street Journal and was given much wider exposure when it was taken up by Rush Limbaugh, the right wing radio talk show host.

The Journal was upset with Sotomayor's ruling that a coalition of New York businesses promoting a program for the homeless had violated federal law by not paying the minimum wage. This, in the Journal's opinion, constituted ''judicial activism.''

But a well-known conservative, Gerald Walpin, has rushed to Sotomayor's defense and his message is worth heeding.

''If they had read the case they would see that she said she personally approved of the homeless program but that as a judge she was required to apply the law as it exists,'' Walpin commented. ''She wrote that the law does not permit an exception in this case. That's exactly what conservatives want a non-activist judge who does not apply her own views but is bound by the law.''

What's particularly aggravating by the stalling tactics of Clinton's foes is that they come at a time of major judicial delays caused by the existing vacancies on the bench Judge Sotomayor would fill. The chief judge of the circuit, a conservative Republican, has written about having to declare ''judicial emergencies'' because of these vacancies.

We hope Sen. Leahy makes a lot of noise over this partisan nonsense.

[From the New York Times, June 13, 1998]

G.O.P., ITS EYES ON HIGH COURT, BLOCKS A JUDGE

(By Neil A. Lewis)

WASHINGTON, June 12—Judge Sonia Sotomayor seemed like a trouble-free choice when President Clinton nominated her to an appeals court post a year ago. Hers was an appealing story: a child from the Bronx housing projects who went on to graduate summa cum laude from Princeton and become editor of the Yale Law Journal and then a Federal prosecutor.

Moreover, she had been a trial judge since 1992, when she was named to the bench by the last Republican president George Bush.

But Republican senators have been blocking Judge Sotomayor's elevation to the appeals court for a highly unusual reason: to make her less likely to be picked by Mr. Clinton for the Supreme Court, senior Republican Congressional aides said in interviews.

The delay of a confirmation vote on Judge Sotomayor to the United States Court of Appeals for the Second Circuit, based in New York, is an example of the intense and often byzantine political maneuverings that take place behind the scenes in many judicial nominations. Several elements of the Sotomayor case are odd, White House officials and Democrats in Congress say, but the chief one is the fact that there is no vacancy on the Supreme Court, and no firm indication that there will be one soon. Nor is there any evidence of a campaign to put Judge Sotomayor under consideration for a seat if there were a vacancy.

Judge Sotomayor's nomination was approved overwhelmingly by the Senate Judiciary Committee in March. Of the judicial nominees who have cleared the committee in this Congress, she is among those who have waited the longest for a final vote on the floor.

Senate Republican staff aides said Trent Lott of Mississippi, the majority leader, has agreed to hold up a vote on the nomination as part of an elaborate political calculus; if she were easily confirmed to the appeals court, they said, that would put her in a position to be named to the Supreme Court. And Senate Republicans think that they would then have a difficult time opposing a Hispanic woman who had just been confirmed by the full Senate.

''Basically, we think that putting her on the appeals court puts her in the batter's box to be nominated to the Supreme Court,'' said one senior Republican staff aide who spoke on the condition of anonymity. ''If Clinton nominated her it would put several of our senators in a real difficult position.''

Mr. Lott declined through a spokeswoman to comment.

Judge Sotomayor sits on Federal District Court in Manhattan, and the aides said some senators believe that her record on the bench fits the profile of an ''activist judge,'' a description that has been used by conservatives to question a jurist's ability to construe the law narrowly. It is a description that Judge Sotomayor's supporters, including some conservative New York lawyers, dispute.

Senator Patrick Leahy of Vermont, the senior Democrat on the Judiciary Committee, was blunt in his criticism of the Republicans who are blocking a confirmation vote. ''Their reasons are stupid at best and cowardly at worst,' he said.

''What they are saying is that they have a brilliant judge who also happens to be a woman and Hispanic. and they haven't the guts to stand up and argue publicly against her on the floor,'' Senator Leahy said. ''They just want to hide in their cloakrooms and do her in quietly.''

The models for the strategy of putting candidates on appeals courts to enhance their stature as Supreme Court nominees are Judge Robert H. Bork and Judge Clarence Thomas. Both were placed on the Court of Appeals for the District of Columbia Circuit in part to be poised for nomination to the Supreme Court. Judge Bork was denied confirmation to the Supreme Court in 1987 and Judge Thomas was confirmed in 1991, in both cases after bruising political battles.

The foundation for the Republicans's strategy is based on two highly speculative theories: that Mr. Clinton is eager to name the first Hispanic person to the Supreme Court and that he will have such an opportunity when one of the current justices, perhaps John Paul Stevens, retires at the end of the current Supreme Court term next month.

Warnings about the possibility of Judge Sotomayor's filling Justice Stevens's seat was raised by the Wall Street Journal's editorial pages this month, both in an editorial and in an op-ed column by Paul A. Gigot, who often reflects conservative thinking in the Senate.

Although justices often announce their retirements at the end of a term, Justice Stevens has not given a clue that he will do so. He has, in fact, hired law clerks for next year's term. The Journal's commentary also criticized Judge Sotomayor's record, particularly her March ruling in a case involving a Manhattan business coalition, the Grand Central Partnership. She rules that in trying to give work experience to the homeless, the coalition had violated Federal law by failing to pay the minimum wage.

Gerald Walpin, a former Federal prosecutor who is widely known in New York legal circles as a staunch conservative, took issue with the Journal's criticism.

''If they had read the case they would see that she said she personally approved of the homeless program but that as a judge she was required to apply the law as it exists,'' he said. ''She wrote that the law does not permit an exception in this case. That's exactly what conservatives want: a nonactivist judge who does not apply her own views but is bound by the law.'' Mr. Bush nominated Judge Sotomayor in 1992 after a recommendation from Daniel Patrick Moynihan, New York's Democratic Senator.

It also remains unclear how some Senate Republicans came to believe that Judge Sotomayor was being considered as a candidate for the Supreme Court. Hispanic bar groups have for years pressed the Clinton Administration to name the first Hispanic justice, but White House officials said they are not committed to doing so. The Hispanic National Bar Association has submitted a list of six candidates for the Supreme Court to the White House. But Martin R. Castro, a Chicago lawyer and official of the group, said Judge Sotomayor's name is not on the list.

The only Republicans to vote against her in March were Senator John Kyl of Arizona and Senator John Ashcroft of Missouri. The committee's other conservative members, including Orrin G. Hatch of Utah and Strom Thurmond of South Carolina, voted in her favor. Mr. Kyl and Mr. Ashcroft both declined to comment today.

[From the Washington Post, June 13, 1998]

UNPACKING THE COURT

The saga of the North Carolina seats on the U.S. Court of Appeals for the 4th Circuit is a caricature of the power individual senators have to hold up judicial nominations. In 1990 Congress added some seats to the 4th Circuit, including one for North Carolina. to this day—7½ years later—that seat remains vacant. The reason is a byzantine power play by Sen. Jesse Helms.

The first nomination to the ghost seat was made by President Bush in 1991. He picked a conservative district court judge and Helms favorite named Terrence Boyle. That nomination was dropped—much to Mr. Helm's fury—when Mr. Bush subsequently lost the 1992 election. Since then Mr. Helms has stymied President Clinton's efforts to fill the seat. When President Clinton named Rich Leonard to it late in 1995, Mr. Helms blocked the nomination, and the Senate never acted on it. With no prospect of success, the nomination was not resubmitted in the next Congress. What's more, since Judge Dixon Phillips Jr. took senior status in 1994 and thereby opened another North Carolina slot on the court, Mr. Helms has also blocked the administration's attempts to fill that seat. As a result, the president's choice—U.S. District Judge James Beaty Jr.—has been in limbo for 2½ years without getting even a hearing. Mr. Helms has not even indicated to the administration what sort of nominees might be acceptable.

Mr. Helms has argued in talks with the administration that the court needs no more judges—a point on which he is, ironically, supported by the 4th Circuit's own conservative chief judge, Harvie Wilkinson III. Mr. Helms, however, was making no such argument when Judge Boyle was up for the slot. And it's a bit difficult to imagine him making the same point now were the president's nominees not likely to add a little ideological—and, for that matter, ethnic—diversity to one of the most conservative courts in the country. Mr. Clinton's nominees would, indeed, change the 4th Circuit—which covers Maryland, Virginia, South Carolina, West Virginia and North Carolina—and the arch-conservative senator cannot be required to relish this prospect.

But ultimately the Constitution gives the president, not individual senators, the power to name judges. And Mr. Helms's effort to keep the court conservative by keeping it small is an improper aggrandizement of his own rule.

Mr. LEAHY. Mr. President, if I have time left, I yield it back. I yield the floor.

THE VERY BAD DEBT BOXSCORE

MR. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 17, 1998, the federal debt stood at $5,491,718,359,124.33 (Five trillion, four hundred ninety-one billion, seven hundred eighteen million, three hundred fifty-nine thousand, one hundred twenty-four dollars and thirty-three cents).

One year ago, June 17, 1997, the federal debt stood at $5,329,352,000,000 (Five trillion, three hundred twenty-nine billion, three hundred fifty-two million).

Five years ago, June 17, 1993, the federal debt stood at $4,296,788,000,000 (Four trillion, two hundred ninety-six billion, seven hundred eighty-eight million).

Ten years ago, June 17, 1988, the federal debt stood at $2,526,239,000,000 (Two trillion, five hundred twenty-six billion, two hundred thirty-nine million).

Fifteen years ago, June 17, 1983, the federal debt stood at $1,303,759,000,000 (One trillion, three hundred three billion, seven hundred fifty-nine million) which reflects a debt increase of more than $4 trillion—$4,187,959,359,124.33

(Four trillion, one hundred eighty-seven billion, nine hundred fifty-nine million, three hundred fifty-nine thousand, one hundred twenty-four dollars and thirty-three cents) during the past 15 years.

BUILDING A BETTER WORLD AWARD

Mr. CAMPBELL. Mr. President, today I take a moment to acknowledge the new ''Building a Better World'' Award which CH2M HILL, an employee-owned company which is headquartered in Denver, has initiated. William D. Ruckelshaus, Chairman of BFI and former EPA Administrator, was presented with CH2M HILL's inaugural ''Building a Better World'' award in ceremonies at the Smithsonian Institution's Castle in Washington, DC on May 6, 1998.

CH2M HILL created this award to recognize the contributions of private citizens or organizations that reflect the company's core business value of making technology work to build a better world. The work of its 7,000 employees worldwide involves assisting public and private sector clients in planning, design, program management, and often construction for drinking water, wastewater management, hazardous waste management, transportation, nuclear waste cleanup projects, and industrial activities.

In choosing a recipient for this inaugural award, the selection panel sought to define a level of excellence that would make this award especially significant to succeeding recipients. Three key criteria are established for CH2M HILL's ''Building a Better World'' award:

Honorees must be deemed to have made a significant difference in improving the lives and prospects of people and society.

Contributions of honorees must be judged to be exceptional in nature and their impact substantial, distinctive and enduring.

Honorees must demonstrate an extraordinary and exemplary exercise of leadership and commitment.

In honoring Mr. Ruckelshaus with the ''Building a Better World'' award, CH2M HILL noted his long standing and continuing efforts in advancing environmental protection, practicing corporate responsibility, affecting sustainable development, and inspiring dynamic public and private citizenship. ''Taken apart from one another, Mr. Ruckelshaus' accomplishments in business leadership, government service and environmental stewardship are extraordinary in there own right'' said Ralph R. Peterson, CH2M HILL President and CEO. ''Taken collectively they form a masterwork of civic character.''

In establishing the ''Building a Better World'' award, CH2M HILL plans to honor people it knows firsthand to have made constructive, significant and lasting contributions to improving the lives and prospects of people and society. The award will be presented on a regular basis as deemed appropriate by the CH2M HILL Board of Directors.

Mr. President, this special award by a leading Colorado-based company provides another example of corporate interest and support for making the world we live in a better place.

I thank the chair and yield the floor.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 2138) making appropriations for energy and water development for the fiscal year ending September 30, 1999.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I will shortly be sending an amendment to the desk. Let me just explain to my colleagues what it is I am attempting to do.

This is not the first time I have been on the floor of the Senate talking ''trash,'' not the kind of trash that immediately comes to mind when you use that phrase but trash meaning garbage. In fact, another Senator just came by a few minutes ago and said, ''This amendment you are offering is garbage.'' I said, ''You are exactly right; it is garbage.'' It is all about garbage. It is all about municipal solid waste, which is a diplomatic term for garbage, the stuff that each of us throws out every day from our kitchen—puts in a plastic bag, puts out at the curb once or twice a week, picked up by a local truck and taken to what we think is a local landfill nearby.

Unfortunately, the State I come from, Indiana, has become the local landfill for a number of States that do not have enough landfill capacity or find it cheaper to load it on a train, load it on a truck, send it overnight down our Nation's railways or highways, and drop it off in the State of Indiana. Over the past several years, we have been the recipient of millions upon millions upon millions of tons of out-of-State trash without any ability as a State to put reasonable restraints and restrictions on receipt of that out-of-State trash in order to manage our environment and manage our own destiny in terms of how we dispose of this municipal solid waste.

The Supreme Court has denied States their individual efforts to regulate this, saying that it is a violation of the commerce clause of the Constitution. But the courts have also been clear to point out the fact that if Congress affirmatively enacts legislation or constraints on the importation of out-of-State trash, or exportation of out-of-State trash, it will be constitutionally acceptable. It is just simply one of those areas where States cannot do it individually but Congress can give them the authority to do that.

We have learned a lot of things over the last several years. I have offered this legislation now five times. This is the sixth. We offered it in 1990, 1992, 1994, 1995, and in 1996, and in each of those years the Senate has passed this legislation. We now come here for the sixth time because we have been unable to secure passage in the other House, or, when we have, it has been dropped in conference. Various other means have been used to defeat the purpose of finally accomplishing what I believe is a reasonable restraint and reasonable solution to the problem that we face.

Now, Michael Jordan and the Chicago Bulls have won six titles. This is my sixth try to win one. I have five defeats, and I hope not to get the sixth defeat. So that we have Jordan and the Bulls on the one hand carrying around the trophy with astounding success, and we have Coats on the other hand loaded up with bags of trash brought in from out of State marked X defeat in 1990; X defeat in 1992; X defeat in 1994, et cetera, et cetera.

Now, I cannot blame my colleagues in the Senate. I cannot do that because through negotiation each time we have been able to work out our differences. We have been able to recognize that there are exporting States that have needs and there are importing States that have problems, and that finding a solution that merely benefits the importing States puts the exporting States in a very difficult position.

So with the help of my friend from New York, Senator D'AMATO, and the help of my friends, on a bipartisan basis we have been able to reach an accommodation which recognizes the need for importing States to have to have reasonable restraints on the amount that they can handle and at the same time gives those exporting States time to put in place mechanisms of their own to deal with their trash or to enter into arrangements with our State so that we can have some type of reasonable control over that.

We have learned those lessons, sometimes the hard way, but we have always been able to reach an agreement and a consensus, and the Senate has been tremendously supportive in the end of my efforts to do this. I am disappointed that we have not had that same kind of support in the House of Representatives. I hope we can as we try once again to convince our colleagues that this is a problem that needs a solution, that we have a solution that takes care of the problems that are facing importing States as well as exporting States.

The amendment I am going to offer today is the interstate solid waste title of S. 534, which passed twice in the last Congress. That title was carefully negotiated. What we are offering is that title in its entirety with a minor modification. We are even now negotiating that modification as I speak.

Specifically, to repeat what I have said on this floor many times, this amendment will allow a Governor, if requested by an affected local community, to ban out-of-State solid waste at landfills or incinerators that did not receive out-of-State municipal solid waste in 1993, a benchmark year.

Let me repeat that because it is a critical point to understand. A Governor is given the authority to ban receipt of out-of-State waste at a landfill that did not receive out-of-State waste in 1993 if, and only if, it is requested by the local community. If the local community wants to receive the out-of-State waste, if they want to enter into a contract with a hauler or the State wants to enter into a contract with another State, they are permitted to do so. The Governor only has the authority if the community asks him to do so and if they meet the test in terms of whether or not they received the waste in 1993. The Governor is also given the authority to freeze, not eliminate but freeze, out-of-State municipal solid waste at 1993 levels at landfills and incinerators that received solid waste during 1993. The Governor, however, may not ban or limit municipal solid waste imports to landfills or incinerators if they have what is called a host community agreement that specifically authorizes out-of-State waste. So if a community wants it, fine. But if a community feels it is overwhelmed and cannot receive it, then it can request the Governor to either ban or freeze, depending on the particular situation that exists.

Just as an example of this, we have small communities, small counties, in Indiana with landfills that were designed to serve the solid waste needs of those communities within that jurisdiction, say, for a 20- or 25-year period of time. They have gone out on a limb with a bond issue or they have come up with the financing to finance this landfill, and they suddenly find that in the period of 12 months or 18 months the entire landfill is filled to capacity, leaving the solid waste jurisdiction in dire straits, no longer able to take care of their own generated municipal solid waste simply because their landfill was clogged up and filled up with waste coming not from their area, not even within their State, but sometimes long hauled halfway across the country or brought down from another State so it is totally out of their control.

Since we started offering this amendment, shipments across the borders have continued. Large importers continue to be adversely impacted. We have been a net importer in the State of Indiana for over 7 years. In 1996, we imported 1.8 million tons of out-of-State trash. Last year, we received the largest amount ever, 2.7 million tons. From 1996 to 1997, our trash imports have increased by 37 percent and our hands are tied. We cannot control what comes across our borders and into our landfills unless we have legislation that gives us the authority to do that.

I do not want to take a lot of time; I know we are trying to move this bill along. Let me just conclude by saying I am not arguing for an outright ban on all waste shipments between States. There are examples of effective and efficient cross-border waste management. My own State of Indiana has several communities which have traditionally worked with other communities in neighboring States to receive solid waste. But we must give States some role in making waste management decisions. Without congressional authority, we will be unable to play any role whatsoever.

We must have a say in how much we receive. We must have the ability to enter into contracts. We do have to recognize the needs of exporting States, but we also have to balance those needs with importing States. We have legislation, which this Senate has passed overwhelmingly on a bipartisan basis, with exporters and importers agreeing that this is a proper balance. I am simply reintroducing what has already been accepted by this Senate with, as I said, a modest modification that even at this point we are discussing with export States to see if we can reach some agreement on that so this legislation can go forward.

AMENDMENT NO. 2716

Mr. COATS. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS] proposes an amendment numbered 2716.

Mr. COATS. Mr. President, 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:

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I am very appreciative of the problems which Senator COATS has alluded to as they relate to those States which are the recipients of large amounts of refuse, solid waste that comes from other States. Indeed, if I were a Senator from one of those States in which local communities, sometimes private landfill operations, enter into agreements and take large quantities, millions of tons of solid waste coming in, I would certainly understand why it is the Governor and/or the local officials would like to have some control with respect to the amount that comes in.

Having said that, I am appreciative of the Senator's recognition of our concern, notwithstanding that we are a State, New York, that exports millions of tons annually because we simply do not have the ability to keep it, and are now closing down the largest landfill in the world, which will be closed in the year 2001. This is a concern to us, a very important and valid concern to the City of New York and to the State as well. If a law, and/or an agreement is entered into which would preclude us from using those areas for which we have negotiated long-term contracts, and indeed would restrict us, particularly at a time when landfills are closing down in New York and the problem will become more acute, we recognize we have to deal with those problems.

Indeed, there are a number of contingencies which are being examined to dispose of this waste in the most environmentally sound and cost-effective manner. Plans are being developed, facilities are being built, land sites, new land sites within the State, are being utilized. There are a number and variety of communities that have entered into programs to recycle and to cut down on the volume. However, this is a monumental problem. Therefore, I appreciate the recognition by my colleague and friend of this problem, and I am going to ask that we have an opportunity—and I recognize people want to move on with this bill—to examine it carefully.

I tell you, I respect, again, the candor of my colleague, Senator COATS, when the fact is the threshold, the ratcheting down threshold has been reduced from when last this legislation was accepted. We passed this overwhelmingly and we worked together cooperatively, and I think it passed by something like 94 to 6. It was an overwhelming vote. But that was in 1995. Since then, while the Senator is pointing out that his State is getting more garbage, we are producing more that does not go into landfills within our State, and therefore ratcheting down is something we could not feel comfortable with. This Senator could not say we will be ready to accept limitations that are further eroded and reduced. That is a very real problem.

Second, the legislation is tied to a date, as my colleague indicates, that says, ''those landfills that were receiving material, solid waste from out of State, as of 1993.''

There have been, I am sure, a number of landfills that have opened up since 1993. So what this legislation would do, if passed in its present form, it would effectively deny New York or other States that export garbage the opportunity to continue that relationship they have with landfills or operations that have opened subsequent to 1993. I have to tell you, I do not know at this point how many tons of waste we would then not be able to dispose of, but it could be significant. If we were to have had a dozen additional sites nationwide opened up, we would find ourselves in a situation where we could no longer use them to dispose of any of the waste.

So I would have to ask my friend to consider updating the 1993 date as a date to determine how you would ratchet this down. It would certainly have to be something closer to—and, indeed, in 1995 we used 1993. It would seem to me as we are into 1998, we

would expect at least that same kind of consideration. Without even studying it, it would seem to me we would have to put in that date, if we are going to maintain some kind of symmetry. Those landfills that were in operation as of 1996, that that would be appropriate if we are going to maintain symmetry.

Again, I haven't had a chance to check this with our State and ascertain whether in this short time they could tell us how many landfill sites have been opened, even between 1996 and today. But that is a concern, and I share that with my colleague.

We have not had an opportunity to really discuss this. Yet, I am deeply appreciative of his concerns and his offer to try to work this out. So I hope that before attempting to move to vote on this, that we could see if we cannot get some cooperative agreement. I do not know what other colleagues in some of the exporting States would feel, but I am still of a mind that if we can be accommodating and meet our needs, I want to do that. But these are two very real concerns.

No. 1, we cannot ratchet down an amount when we are producing more garbage than ever before, one that we had agreed to back in 1995. And, second, we would have to do something with the date of grandfathering those landfills. We would have to bring them up to a more current position so as to determine those which we may be using today which we were not using heretofore.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Might I ask the Senator from New York, and the Senator from Indiana, are they going to try to iron out the differences that have been alluded to?

Mr. COATS. I would hope we could. I talked to the Senator from New York, indicating we are flexible in terms of moving this on. I agree with the Senator there may be some need to have additional negotiations. Since the Senate passed this before and this language has been acceptable, we could agree to go back to the original ratchet, the original number used as the baseline for ratcheting down. We dropped it 100,000 tons—we could go back to the 750,000, if that would be acceptable and allow us to go forward with this. There is no way we can, I believe, derive an answer to the Senator's second question, which is using 1999 as a different base than 1993.

I assumed all along, based on the assurances given to us by the Senator from New York and other exporting States in the past, that development of in-State facilities was accommodating more and more of their municipal waste. In fact, I was assured of that several years ago. If they just had a 2-, 3-, 4-year flexibility, they would have their own in-State capacity or at least have the capacity that would allow them not to significantly increase the exports.

I think we can work that out. I would like, obviously, to move this along and pass the bill. We all know it is a long way from ever getting to conference because of concerns in the House on other issues. But if there is any way the Senator from New York can see to, one, agree to our offer to go back to the original figure on the ratchet basis from 650,000 to 750,000 and then my assurances that we will work with him and work with Members of the House and his delegation to address this other question—which I don't think we have the answer to at this point and can't get it in the short amount of time that the chairman wants to move this appropriations bill—I am certainly open to that.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if I can address a question to the Senator from Indiana.

Do you know if your staff has had conversations with the senior Senator from New Jersey? Because he usually has had a question on this.

Mr. COATS. We have not. All I know is, what we are offering here is exactly what the Senator from New Jersey agreed to and voted for in the past.

Mr. REID. I will say, on the minority side, we will be willing to accept this. I do have to get a clearance from Senator LAUTENBERG, who is testifying at this time, and I am sure we can get that done very quickly.

Mr. COATS. I think it is important that I go forward and ask unanimous consent to modify my amendment to change the figure on page 2——

Mr. DOMENICI. I say to the Senator, I don't think you need unanimous consent.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

AMENDMENT NO. 2716, AS MODIFIED

Mr. COATS. Mr. President, I would like to modify my amendment by changing the figure on line 25, page 2, of the amendment from ''650,000 tons'' to ''750,000 tons.''

The PRESIDING OFFICER. The amendment is so modified.

Mr. COATS. With that, Mr. President, I will tell the Senator from Nevada that he can assure the senior Senator from New Jersey that what is being offered here is identical to what was offered and agreed to in the past by the Senator and is exactly the same legislation in regard to the municipal solid waste section of that bill.

Mr. D'AMATO. Mr. President, let me say this: First of all, I appreciate the Senator's recognition of the fact that the ratchet figure has to be the same, or should be, and moving to do that. I understand he brings these requests at the request of his Governor. I do have a very serious concern, and that is, if one reads the legislation, it says:

In 1999 a State may ban 95 percent of the amount exported to a State in 1993.

That is a serious concern, understanding that, again, we are now 3 years further down the road. I don't know what the impact will be today. It is one thing to say, ''Well, we agreed to that 3 years ago.'' I am concerned, and, again, if we are going to talk about symmetry, at the very least it seems to me that that figure will have to read ''exported to a State in 1996,'' so that we maintain the same 2 years, the 2-year differential.

I feel much more comfortable in saying let's move the process. And, indeed, if there are other things that have to be done, hopefully in conference we can work that out with the assurance of the chairman and the ranking member that we can deal with other areas. But these are issues of very significant proportions as they relate to our local governments.

While I can understand the concern when an area is being inundated and people feel there is nothing they can do—the local legislatures—I understand that. I ask my colleague to understand what our concerns are if we have no place and valid contracts have been entered into subsequent to 1993 and we find now, as a result of moving along with this, they no longer have a place to dispose of it.

Even moving it to 1996, I say, may not be sufficient, because we may have—and not in the State of Indiana, but in other jurisdictions—opened up facilities or are presently using facilities that have been opened maybe last year, and here I am in a position that I will be agreeing that these facilities will no longer be possibly available to us. That is why I am concerned, absent that information.

If we go along with the year 1996, I hope my friend will recognize that is a very real accommodation, as opposed to 1993, and then take it on good faith that we will examine this, so that even if it goes to conference, we might have to lodge some kind of objection if we found that subsequent to 1996 there were facilities that were open that were substantial and necessary for us to accommodate the disposal of this waste. I want to be accommodating, but I have to state it in this manner so that we can both protect the interests of our States and our citizens. I think that is about as far as I can go on this.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, in response to the Senator from New York, I will state a couple of things.

No. 1, we passed this legislation in 1996. So the agreement that we had reached relative to using 1993 was acceptable to the State of New York, the State of New Jersey, and other exporters just in the last Congress. In fact, we passed it twice in the last Congress. There was no request at that time, in 1996, to change the base year from—in fact, we offered 1993 or 1994, and 1993 was a more acceptable year—there was no request then to address the concern that the Senator from New York has just raised relative to having to change

that base year to accommodate what might be perceived as increased exports.

Secondly, I will state again for the Record that we have been repeatedly assured by exporters—by exporting States that all they needed was a little bit of time to develop more of their own capacity and that actually I think it would be just as logical a request from the Senator from Indiana or anybody from an importing State to request that we use a lower amount rather than a higher amount, because 10 years ago everybody said, this won't be a problem; 10 years ago, people said 5 years from then it wouldn't be a problem, because all they needed was 3 or 4 years to sort of get their own act together.

We understood that, and we understood the prodigious volumes of municipal waste they were generating. The population in the Senator's State I don't believe has significantly increased. In fact, I think they are losing population.

I don't know that they are necessarily generating more waste, unless people are eating more than they used to. It might be. The economy is good. Maybe there is more waste to dispose of. My daughter has moved to New York, so my wife and I go up and we eat out. I suppose that is out-of-State consumption. We try to eat everything we order, I will state for the record, so that we don't generate any more waste that can be sent back to Indiana. I don't think it is good for the Senator from Indiana to go to New York, generate waste that then is packed up that night and shipped by truck and dumped in my landfill in my hometown.

I don't understand the need to increase or to look on the assertion or the basis that they have less disposal capacity now than before when we have been assured on the floor that all they needed was just a few years to provide more in-State capacity and that would alleviate our problem. We have made very significant concessions in terms of addressing the concerns of the exporting States.

My original legislation that I offered back in 1990 gave the Governor the outright authority to flat out ban any garbage from out of State. And that passed the U.S. Senate.

We have the votes to do that. There are about 31 States that are importers. They are the ones that get dumped on. There are just a handful of States that generate the exports. But we recognize that problem. They are high-density States and generate a lot of waste.

We recognized their problem. And we address their problem. And, in so doing, we made considerable concessions about what we would continue to receive, that if a community or a municipal waste disposal jurisdiction wanted to take out-of-State waste, enter into a contract to do that, why, we would allow that to take place. We said the Governor could not outright ban; he could only freeze at certain levels.

We adjusted the baseline amounts so that we would continue to receive prodigious amounts of waste—all trying to be a good neighbor, trying to help out a State until they could develop their own disposal capacity.

Now, New York is a big State. There is a lot of room in New York to put—a lot bigger than the State of Indiana. I just assumed——

Mr. D'AMATO. Will the Senator yield?

Mr. COATS. I will be happy to yield in a moment.

I just assumed the State of New York was taking advantage of some of that space outside of Manhattan to address those needs and by now we would not even need to be here addressing this. But something has not happened; therefore, I think to go back to the original agreement that gives States some authority to make reasonable rules relative to how much they receive and so that they can manage their own environmental affairs, something that has been approved and accepted by every Member in this body in the past, I think that is a reasonable way to proceed.

I just answer the Senator from New York by saying, I think it would be just as reasonable if I were here asking for lower baseline numbers rather than higher, but I am willing to stay where we were because that is what we worked so hard to agree on just in the last Congress.

Mr. D'AMATO. Well, if the Senator would yield just for an observation, and I observe—and I am looking at the summary of the amendment. When I look at the summary of the amendment, as drawn, it says, in 1999, greater than 1.4 million tons or 90 percent of the amount exported in 1993. Now, what we would be agreeing to is that within less than 6 months—within 5½ months—that we would agree that the following amounts could not be greater than 1.4 million tons or 90 percent of the amount exported in 1993. What I am saying is, I am willing to go along with the 1.4 million tons or 90 percent of that exported in 1996. OK.

Now, let me also say that in 1 year and 5½ months—if you go to the next year—it says in 2000, greater than 1.3 million tons. You go down to 1.3 million or 90 percent of the amount exported in 1999.

So what I am suggesting is that I cannot in good conscience support an agreement when I do not know what we have done between 1993 and to date. But I am willing to take it up to 1996. And we are talking about 5 months. And then within a year you get the second figure that triggers off. So I am just talking about 1 year.

You cannot ask us to put ourselves in the position to have us sign off on this. I think even taking 1996 is Russian roulette to the extent—I hate to say it is Russian roulette—but at least there is a symmetry between what we did before. And I only do this on the basis that when we go to conference, if indeed we have some severe problems, I will notify the committee. And if the Governor's office advises us there is no way they can possibly do it, I will notify the committee. And I think they would act responsibly to make the necessary changes or to drop the legislation.

I have to be candid with you on this, so I suggest that is about as far as I could possibly go at this time. And I do it in the spirit of accommodation.

Mr. COATS. So Mr. President, as I understand it, the Senator is proposing that relative to the export ratchet——

Mr. D'AMATO. Yes.

Mr. COATS. Only for the year 1999——

Mr. D'AMATO. No.

Mr. COATS. The first line of the summary—only for the year 1999, the Senator would like to change the base year from 1993 to 1996.

Mr. D'AMATO. That is right.

Mr. COATS. Is that correct?

Mr. D'AMATO. Sure. That is correct. And what I am suggesting—in other words, in 1999, 1.4 million or 90 percent of the amount exported in 1996; and I hope we can get that amount. Hopefully, the State will be able to give us those numbers, and hopefully all States would be able to give us those numbers. And thereafter I would say we have an agreement, because we are then holding to—if you read in 2000, it says greater than 1.3 million tons or 90 percent of the amount exported in 1999. So we are, then, at least, taking it on a rational basis as it relates to how much was actually exported.

Mr. COATS. Well, let me say this to the Senator. First of all, I know that, given the 4 weeks we spent on the tobacco legislation, things are desperately behind. We are desperately behind the curve, and I know the Senate is anxious to move this appropriations bill forward as well as the agriculture appropriations, which I believe is coming next.

In the interest of expediting that schedule, I would be willing to accept that change offered by the Senator from New York if it would allow us to move forward, and with the understanding that we have a mutual agreement here to sit down and try to work this out.

Mr. D'AMATO. If there are any other—yes.

Mr. COATS. Given the fact that we do not have the answers to the question, I think the Senator and I—and we worked on this before—we could probably work out an acceptable arrangement which could help everybody. If we could get that assurance and move forward with it, I would be willing to make that change.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I am grateful to both Senators for trying to work this matter out. Senator LAUTENBERG—I have spoken to him on the telephone. His staff is here on the floor. He should be here

momentarily. Hopefully, he will sign off on this after speaking to the two, the Senator from Indiana and the Senator from New York.

Mr. D'AMATO. Let me again suggest that with those two changes, the change of the 750,000 tons, which the Senator has already made in his amendment, and that of changing the 1999 agreement to reflect the amount exported in 1996, if the Senator would make that amendment, I am willing then to accept the amendment with the proviso and understanding and the gentlemen's agreement being that any other difficulties we will see if we can work out. And then we would rely on the committee chairman and the ranking member to help us and aid us in any further legislative language that might be needed.

Mr. COATS. Well, Mr. President, I certainly think we have the makings of an offer here, if we can get clearance from the rest—the Senator from New Jersey who helped in the past to reach this compromise. Obviously, nothing has changed. In fact, it probably changed a little marginally for the better for the Senator from New Jersey.

Mr. DOMENICI. Will the Senator yield?

Mr. COATS. Yes.

Mr. DOMENICI. I think if you want to work on that language —and I understand Senator LAUTENBERG is going to have to express his views; and he will be here momentarily. I wonder, I say to the Senator, if you might agree with me that Senator ALLARD from Colorado, who wants to speak to the bill—he is not going to offer an amendment—could speak for up to 10 minutes while you are working on this.

Mr. COATS. I have no objection.

Mr. ALLARD addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank my colleagues. I want to thank the chairman for allowing me the time to speak for a few minutes on the bill.

I rise in support of Senate bill 2138 making an appropriation for energy and water development. I also want to make a few comments in regard to the Jeffords-Harkin amendment, which was adopted a little bit earlier on in the day, which was to restore funding to the renewable energy account in the 1999 energy and water appropriations bill we are now debating.

First of all, I thank the chairman for his diligence and hard work in working with my office on issues that are very important to the State of Colorado. Last year, you worked hard with our delegation, and are continuing to work with this delegation. I am comfortable with the legislation in the form that it is being reported out of the Senate.

I also recognize that there is a lot of work, or some work, that has to be done in conference committee and maybe a few issues yet that still have to be resolved as far as this particular bill is concerned.

Let me just say a little bit about the priorities that I have as somebody who represents Colorado and what I am thinking about as far as those priorities are concerned. First of all, research programs that will benefit from this funding should be a national priority. They are energy-type research, and they are very, very important to the future of this country and having us not rely on foreign sources for our energy. It is well known that nearly half of all our Nation's oil is imported and that these imports account for 36 percent of the U.S. trade deficit.

American renewable energy and energy-efficient technologies help offset fuel imports. They build our domestic economy, and they strengthen our national security. Renewable power is an attractive energy source for the future. Alternative fuels such as propane, natural gas, ethanol, and methanol are clean fuels and are largely free of the pollutants regulated by the Clean Air Act. Renewable energy will provide clean and inexhaustible energy for millions of consumers.

Specifically, funding for renewable energy technology is important to my home State of Colorado. My State supports several energy-efficient pilot programs as well as established renewable energy sources. Some of the Nation's best wind and solar resources are in Colorado, and many of my constituents currently rely on renewable energy.

These are not far-fetched research projects that we are talking about. My State, for example, has many ranchers who are currently using sun and wind energy in the management of their lands, providing for their energy needs.

Colorado is also the proud home of the National Renewable Energy Laboratory, referred to as NREL—the leading renewable energy research laboratory in the Nation, I might add. NREL conducts the needed research and develops and demonstrates sustainable-energy technologies. This lab relies heavily on the funding included in this amendment.

In addition, there are many entrepreneurs who are counting on funding from the Department of Energy to continue improving and increasing availability of renewable energy technology. There are 132 businesses in Colorado that specialize in renewable-energy-related products and services. Congress must continue to support research for renewable energy.

We also need to support the partnerships among the Government research entities, universities, and businesses. These cooperative efforts ensure that the research produces applicable results and furthers our goal of increasing our use of renewable energy resources.

In past years, I have sponsored environmental awareness seminars with Colorado State University to promote the use of alternate fuels. I am a former member of the House Renewable Energy Caucus, and I recently became the chairman of the newly formed bipartisan Senate Renewable and Energy Efficiency Caucus. I am a strong proponent of using renewable energy sources, and I believe we should continue to support that research, perfect the technology, and expand the use of renewable resources.

I thank my colleagues from Vermont and Delaware for their efforts to protect funding for renewable energy.

The next point I want to make is very, very important. While I do support the intent of the Jeffords-Roth amendment, I want to highlight one portion that I hope the conferees will change. One of the offsets included in the amendment is a 1.5 percent decrease in funding for cleanup of nondefense nuclear sites that are no longer utilized. One of those sites is the Rocky Flats Environmental Technology Site, which I will talk about further a little bit later on. My hope is to have this site cleaned up by 2006. In order to do that, it will require every dollar that has been appropriated for it in this bill. While in this instance I support the Roth-Harkin amendment, in the future I will have difficulty doing so if this same offset is included. In other words, the priority as far as my State is concerned, we spend every dollar to clean up Rocky Flats, but if we can do that, if we can put more money in renewable labs without taking away from the dollars, I can be supportive. I want it clear that my top priority is the cleanup of the Rocky Flats facility.

On that topic, Mr. President, I further thank Mr. DOMENICI and Mr. REID for their hard work on the energy and water appropriations legislation.

There is a lot of talk about surpluses nowadays. While I know that Mr. DOMENICI's subcommittee was not the beneficiary of any surplus, therefore it is a very pleasant surprise that he was able to find the funds necessary for an accelerated cleanup of Rocky Flats. In fact, I note that he provides $32 million over the administration's request to be sure that we remain as close to a 2006 closure date for Rocky Flats as possible.

As Mr. DOMENICI knows, this has been a very important issue for me since I came to the Senate last year. The basis of my concern is the proximity of Rocky Flats to over 2 million Coloradans. This makes the site one of the biggest potential threats to the Denver metro area. Rocky Flats is home to tons of plutonium that needs to be removed from Colorado. The funding in this bill will help achieve that end.

Furthermore, I note the dramatic upward swing in funding from fiscal year 1997 to date. In fiscal year 1997, $487 million was appropriated for Rocky Flats cleanup. In fiscal year 1998, that number jumped to $632 million. Today's bill proposes $657 million for cleanup. If we can hold this amount, we should be able to safeguard this material and close Rocky Flats in an expeditious manner.

Again, I close my remarks by complimenting the chairman on his hard work on both the budget and this appropriations bill and tell him how very

much I appreciate his sensitivity to the problems we have in my State, particularly in regard to cleanup of Rocky Flats.

I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, let me say to Senator ALLARD and to the people of your State, because the community of interests have come together—and much of that is attributable to your leadership—we are now able to say to all of the country that we finally have one of these sites that must be cleaned up, that has a date, a date certain, that it will be cleaned up. Now, that is a rarity.

If the American people knew how long it takes us to clean up one of these sites because of a variety of reasons—some of which are not very good, yet we are stuck with them—they would be delighted, as I am, that we now have one that can be cleaned up and completed and we can say this is part of history in that area, and the surrounding communities are rid of this waste.

We saw that daylight, and we put in extra money. We are not apologetic in a tight budget year to say we put more in because we have to have some successes. We are busy spending our taxpayers dollars in projects of cleanup that we cannot even tell you will ever get cleaned up. Some of the things causing that we can't even change here on the floor of the Senate unless we go back and undo State law and have more hearings and look at contracts. Maybe that ought to be done, because there is a bit of irrationality regarding some of the projects of cleanup that now turn out to be situations where, when the project was in full bloom and operating to produce whatever it was producing for the nuclear deterrent system, they had fewer workers then than they have cleaning up. The Senator probably found that in his research as he familiarized himself with this particular dilemma.

I am very pleased that people like you went to the community and clearly indicated that there aren't a lot of options. If they don't want to let some of these things happen, it will all stay there. You told me that. You took the lead in convincing many people that those who didn't want one thing done, unless it was absolutely beyond perfection, with no possible risks involved for anyone or anything, that we wouldn't move a bit of this waste under those conditions. I laud you for that. I am glad we found money to put in to take care of it quickly.

Mr. ALLARD. If the Senator will yield for a moment, I will do everything in my power to make sure this money is spent wisely on that project. We are trying, through our office, to make sure it is well spent. My commitment to you is, we are working hard to help you in overseeing that it is spent responsibly.

Again, we appreciate your sensitivity to the urgency of this matter. And like you, I hope that when we get this cleaned up, we can again clean up sites all over the country with similar situations. I appreciate the high priority you have given this particular site. I thank the chairman.

(Mr. SMITH of Oregon assumed the Chair.)

Mr. DOMENICI. Mr. President, we want to say to the leadership of the Senator's community there in his State, at least you understand we don't have a clean project that is going to go on forever. We are not past that stage in some areas. Some people think that paychecks by the hundreds of millions ought to be coming on for another 100 years. I don't know how we are going to be able to do that. Costs will keep going up. We have to find some satisfactory ways, with our intelligence, science, and innovation, to do some of these things better. That is what is happening there.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I wonder if the Senator from Michigan wants to state the purpose for going into morning business. Does he want 5 minutes as if in morning business, or 10 minutes?

Mr. ABRAHAM. Mr. President, I respond. Earlier today a resolution was introduced to commemorate the victory of the Detroit Red Wings. I would like to complete the action on that, and if we had 5, no more than 10 minutes, certainly this would be done.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senator from Michigan have up to 10 minutes for the purpose he just stated, and then, after that time has expired, we return to the pending business.

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

Mr. ABRAHAM. Mr. President, I thank the Senator from New Mexico.

CONGRATULATING THE DETROIT RED WINGS ON WINNING THE 1998 NATIONAL HOCKEY LEAGUE STANLEY CUP CHAMPIONSHIP

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 251, which was introduced earlier today by Senator LEVIN on his behalf and my behalf.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 251) to congratulate the Detroit Red Wings on winning the 1998 National Hockey League Stanley Cup Championship and proving themselves to be one of the best teams in NHL history.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

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

Mr. ABRAHAM. Mr. President, I was initially going to seek to dispense with the reading of the resolution. But it sounds so good that I could not help to want to hear and allow our gallery to hear, as well, those words.

We in Michigan, and hockey fans, I think, throughout the world, are excited by the victory Tuesday night of the Detroit Red Wings in the Stanley Cup hockey finals.

Earlier today, Senator LEVIN, on his behalf and my own, introduced a resolution to commemorate that victory. I will not take the time of the Senate to read the entire text of that resolution again. But I would like to stand here today to acknowledge and express the pride that he and I and the Detroit Red Wings fans, not only in Michigan but everywhere else, have as the team on Tuesday won its second consecutive Stanley Cup hockey championship.

Last Friday, I had the opportunity to host the visit of the Stanley Cup itself to the Senate. We had the chance to share with our colleagues a little bit about the history of that most ancient trophy, which commemorates each year the winner of hockey's ultimate championship.

As I say, this is the second straight year that championship has been won by the Detroit Red Wings. It is also the second straight year that the Red Wings have won the championship with a four-game sweep, clearly an indication of the talent and the abilities of this team.

I think this year's victory was also special for a variety of other reasons that I would like to mention.

First, as evident throughout the season and certainly during the final days of the playoffs, this victory was special because of the presence in the players' spirits and minds, and then ultimately at the arena itself, of Vladimir Konstantinov, one of the stars of last year's championship who was innocently the victim of an auto accident and injury that made it impossible for him to play this year. We all wish him a speedy recovery, although he is still wheelchair bound.

It was a special win because the players dedicated the season to him and to the team trainer, Sergei Mnatsakanov, who likewise had been injured in that automobile accident.

It marked the eighth straight Stanley Cup victory for Scotty Bowman, and that ties him with his mentor, Toe Blake, for the most victories of this championship in the history of the NHL.

It was a special victory because team captain Steve Yzerman, in his 15th season, was awarded the Conn Smythe Trophy, which is a trophy that goes to the most valuable player in the playoffs. Those of us who have followed Red Wing hockey throughout that time

know just how much he has meant not only to Detroit hockey but hockey in the NHL, one of the great players of all time.

We in Michigan refer to Detroit as ''Hockeytown U.S.A.'' That has been our designation, but I think this victory, coupled with last year's victory, will make it clear, to everyone who may have had some doubts as to where the ultimate center of hockey spirit in this country is, that at least until they are dethroned, Detroit, MI, is that center and the Detroit Red Wings are the team that deserve the accolades they were able to achieve on Tuesday night.

Mr. President, I now ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD at the appropriate place as if read.

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

The resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 251), with its preamble, reads as follows:

S. RES. 251

Whereas on June 16, 1998, the Detroit Red Wings defeated the Washington Capitals, 4–1, in Game 4 of the championship series;

Whereas this victory marks the second year in a row that the Red Wings won the Stanley Cup in a four game sweep;

Whereas the Stanley Cup took its first trip around the rink in the lap of Vladimir Konstantinov, the Red Wings defenseman who was seriously injured in an accident less than a week after Detroit won the Cup last year;

Whereas Vladi and his wife Irina, whose strength and courage are a source of pride and inspiration to our entire community are an exemplary Red Wings family and Vladi's battle is an inspiration to all Americans;

Whereas Marian and Mike Ilitch, the owners of the Red Wings and community leaders in Detroit and Michigan, have brought the Stanley Cup back to Detroit yet again;

Whereas the Red Wings, as one of the original six NHL teams, have always held a special place in the hearts of all Michiganders;

Whereas it was a profound source of pride for Detroit when the Wings brought the Cup back to Detroit in 1954 and 1955, the last time the Wings won consecutive NHL championships;

Whereas today, Detroit continues to provide Red Wings fans with hockey greatness and Detroit, otherwise known as ''Hockeytown, U.S.A.'' is home to the most loyal fans in the world;

Whereas the Red Wings are indebted to Head Coach Scotty Bowman, who has brought the Red Wings to the playoffs 3 times in the last 4 years, and with this year's victory, has earned his eighth Stanley Cup victory, tying him with his mentor Toe Blake for the most championships in league history;

Whereas the Wings are also lucky to have the phenomenal leadership of Team Captain Steve Yzerman, who in his fifteenth season in the NHL, received the Conn Smythe Trophy, given to the most valuable player in the NHL playoffs;

Whereas each one of the Red Wings will be remembered on the premier sports trophy, the Stanley Cup, including Slava Fetisov, Bob Rouse, Nick Lidstrom, Igor Larionov, Mathieu Dandenault, Slava Kozlov, Brendan Shanahan, Dmitri Mironov, Doug Brown, Kirk Maltby, Steve Yzerman, Martin Lapointe, Mike Knuble, Darren McCarty, Joe Kocur, Aaron Ward, Chris Osgood, Kevin Hodson, Kris Draper, Jamie Macoun, Brent Gilchrist, Anders Eriksson, Larry Murphy, Sergei Federov, and Tomas Holmstrom: Now, therefore, be it

Resolved, That the U.S. Senate congratulates the Detroit Red Wings on winning the 1998 National Hockey League Stanley Cup Championship.

Mr. ABRAHAM. Mr. President, I again thank the Senator from New Mexico for giving us the chance to do this today. I appreciate his indulgence. I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

Mr. DOMENICI. Mr. President, I call for the regular order.

AMENDMENT NO. 2713

The PRESIDING OFFICER. The regular order is amendment No. 2713.

Mr. DOMENICI. We have no objection to Senator INOUYE's amendment No. 2713.

The PRESIDING OFFICER. If there is no further debate on the amendment, without objection, the amendment is agreed to.

The amendment (No. 2713) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is it correct that the Coats amendment is now the pending business?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Mr. President, I ask Senator COATS what is his pleasure.

Mr. COATS. Mr. President, we are awaiting word from New Jersey, one of the States that is affected by this amendment, an exporting State. We are assured that we will have an answer one way or the other. It really rests in their hands. I think we have consensus to go forward, but there seems to be a problem with that State. I see the Senators from those States now. I think we will be able to give an answer very shortly.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if I can say to my friend, the manager of the bill—and I say this with some reluctance because I have such great respect for the junior Senator from Indiana—I have received calls from Connecticut, Montana, and there are others——

Mr. DOMENICI. Illinois.

Mr. REID. Illinois. I think the New Jersey problem is not the problem. There are many problems related to this. This is not going to go away. I wish I had better news, but we have a number of States that are very concerned about this.

If I can get the attention of the Senator from Indiana, I do not think the Senator from Indiana heard what I said. I say this with the greatest respect for my friend from Indiana, we have not only received calls from the New Jersey delegation, but have received calls from Illinois, Montana, Connecticut. Some people may not have a concern with this bill but have one of their own dealing with the transportation of waste, trash. I just have told them to stay in their offices until we see if we can get this worked out. I am really concerned about this kind of bogging things down, for lack of a better description.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I had a discussion earlier with the Senator from New Mexico. I had a discussion with the chairman of the Appropriations Committee. I told the Senator from New Mexico that it is not my intention to bog down this bill. I understand the dilemma the Senate is in due to the 4 weeks we spent on the tobacco bill without resolution. We have appropriations bills that need to move.

I assured the Senator from New Mexico that it was not my intent to do this. I was operating on the assumption that the agreement that we so torturously reached in 1996, that received the unanimous support of every Senator, including the Senators from New York and the Senators from New Jersey, including the Senators from Illinois and exporting States, after days and weeks and months of negotiations, that that would still be operative.

Now it seems that everything has changed. I am not going to insist on my rights to allow this amendment to tie up this appropriations bill. I think there is important work in the Senate that needs to be done. I will just say to my fellow Senators, this is an issue that is not going to go away. I said it in 1990. I have said it every year since. It has passed the Senate five times, sometimes by unanimous consent, sometimes by 94 votes.

Importing States are at a tremendous disadvantage, and they have no say in the ways in which they can manage their own environmental destiny as it regards municipal solid waste. Exporting States can continue to make promises about what they are going to do. The fact of the matter is they apparently are not delivering on those promises. We were assured time after

time that if they just bought a little more time, they would achieve the capacity necessary to deal with their own waste, but they found it convenient to ship it somewhere else so that somebody else can deal with their problems.

It appears now that the evidence is in that they are not doing anything to deal with their own waste, and that puts those of us who are importing States at a great disadvantage. By the way, that is 31 States.

We agreed we are going to continue to work on this. We will continue to work on this. We will attempt to achieve another consensus so that we can move this legislation, but, in the meantime, I think it is important that we go ahead with other work in the Senate that has been planned.

With that in mind, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 2716, as modified) was withdrawn.

Mr. DOMENICI. Mr. President, I thank the Senator from Indiana, the very distinguished Senator from Indiana. I thank him personally for accommodating us today. I think he does make a point, and maybe he should not give up, because it seems to me, with a little bit of negotiation—this catches some people by surprise—but we have cleared that very bill—well, it was an amendment when we cleared it. We had taken it to the House and had trouble in the House with it. Clearly, we haven't had problems in the Senate. The situation is such that somebody can talk on it and not let us vote. The distinguished Senator from Indiana agrees with the Senator from New Mexico—and I thank him for that—that we ought to proceed and finish this bill. That is what he has done. I very much appreciate it, and the Senate appreciates it.

Mr. REID. Mr. President, if I can also elaborate on what my friend, the manager of the bill, has said, there is no Senator in this body who has been more diligent on an issue than has the Senator from Indiana been on this issue of transportation of waste. He has rendered a great service not only to the people of the State of Indiana, but this country. I join in his appreciation for the Senator from Indiana allowing this bill to move forward.

Mr. DOMENICI. Mr. President, we have one amendment that is working its way through the clearance process, but it has not been cleared yet. Having said that, it is my understanding that there is no amendment pending at this point, is that correct, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENTS NOS. 2717 THROUGH 2725, EN BLOC

Mr. DOMENICI. Mr. President, I send to the desk nine amendments and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes amendments numbered 2717 to 2725, en bloc.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 2717

(Purpose: To set aside funding for the Omaha District of the Army Corps of Engineers to pay certain claims)

On page 9, line 3, after ''expended,'' insert ''of which $460,000 may be made available for the Omaha District to pay pending takings claims for flooding of property adjacent to the Missouri River caused by actions taken by the Army Corps of Engineers, of which $2,540,000 shall be available for the project on the Missouri River between Fort Peck Dam and Gavins Point in South Dakota and Montana, under section 9(f) of the Act entitled ''An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes'', approved December 22, 1944 (102 Stat. 4031)''.

AMENDMENT NO. 2718

On page 8, line 7, add the following before the period:

'': *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers is directed to use $500,000 of funds appropriated herein to continue construction of the Joseph G. Minish Passaic River waterfront park and historic area, New Jersey project''.

AMENDMENT NO. 2719

On page 8, line 9, before the period at the end insert '': *Provided further*, That of amounts made available by this Act for project modifications for improvement of the environment under section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), $500,000 may be made available for demonstration of sediment remediation technology under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note: 104 Stat. 4644)''.

AMENDMENT NO. 2720

On page 27, line 21, delete ''.'' and insert in lieu thereof the following:

'': *Provided further*, That of the amount appropriated herein $30,000,000 is to be available for the Initiatives for Proliferation Prevention program: *Provided further*, That of the amount appropriated herein $30,000,000 shall be available for the purpose of implementing the 'nuclear cities' initiative pursuant to the discussions of March 1998 between the Vice President of the United States and the Prime Minister of the Russian Federation and between the U.S. Secretary of Energy and the Minister of Atomic Energy of the Russian Federation.''

AMENDMENT NO. 2721

On page 8, line 9, insert the following before the period:

'': *Provided further*, That the Secretary of the Army may make available $100,000 for the Belle Isle Shoreline Erosion Protection, Michigan project; $100,000 for the Riverfront Towers to Renaissance Center Shoreline Protection, Michigan project; and $200,000 for the Great Lakes Basin, Sea Lamprey Control, Section 206, Michigan, project''.

AMENDMENT NO. 2722

(Purpose: To provide funding for the isotope ratio capabilities at the University of Nevada Las Vegas)

On page 22, line 19, insert the following before the period:

'': *Provided further*, That $500,000 of the unobligated balances may be applied to the identification of trace element isotopes in environmental samples at the University of Nevada-Las Vegas''.

AMENDMENT NO. 2723

On page 3, line 8, insert the following before the period:

'': *Provided further*, That the Secretary of the Army may make available $500,000 for the Atlanta Watershed, Atlanta, Georgia project''.

AMENDMENT NO. 2724

(Purpose: To set aside funding for support of the National Contaminated Sediment Task Force)

On page 10, line 7, before the period insert '', of which $250,000 may be made available to support the National Contaminated Sediment Task Force established by section 502 of the Water Resources Development Act of 1992 (33 U.S.C. 1271 note; Public Law 102–580)''.

AMENDMENT NO. 2725

On page 22, line 14, strike: ''2,669,560,000'' and replace it with ''2,676,560,000''.

Mr. DOMENICI. Mr. President, the amendments are as follows: Senator DASCHLE, flood damage claims; Senators LEVIN and GLENN, a section 1135 project; Senators BIDEN and DOMENICI, an IPP and nuclear cities amendment; Senator LEVIN, Michigan continuing authorities projects; Senator REID, trace element isotopes; Senator CLELAND, Atlanta watershed project; Senator LEVIN, contaminated sediment task force; and Senators DOMENICI-REID on science.

Are these cleared on your side, I ask the Senator?

Mr. REID. No objection.

Mr. DOMENICI. No objection on your side?

Mr. REID. No objection.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendments, en bloc.

Without objection, the amendments are agreed to.

The amendments (Nos. 2717 through 2725), en bloc, were agreed to.

Mr. DOMENICI. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

Mr. BIDEN. Mr. President, I thank the distinguished Senators from New Mexico and Nevada for including an idea that I proposed in the managers' amendment to the energy and water appropriations bill. I am confident that together we will lessen the risk that former Soviet scientists will help any rogue state to build nuclear, chemical or biological weapons.

This amendment does two things. First, it earmarks an additional $15

million for the Department of Energy's Initiative for Proliferation Prevention, or IPP, program which was unfairly cut from the President's budget request. And second, it earmarks start-up funds for the ''nuclear cities'' initiative that was endorsed by both Vice President AL GORE and Russian Prime Minister Chernomyrdin.

Initiatives for Proliferation Prevention, or IPP, is a program that creates employment opportunities for former Soviet arms specialists by helping them develop their ideas for commercially viable goods and services. As an idea reaches fruition, IPP brings the arms specialists into joint ventures with outside investors, who gradually take over the funding. For example, thanks to IPP, a U.S. firm is working with Ukrainian scientists to develop and market a device for decontaminating liquids. This device will enable the Ukrainian dairy industry to produce fresh milk despite the lingering effects of the Chernobyl reactor meltdown.

IPP had a slow start. It is hard to come up with really viable commercial ventures, to find investors, and to make sure they can invest safely.

The executive branch thought that IPP had unspent funds from past years. So they cut its budget by 50 percent—down from $30 million to $15 million.

But IPP has begun to take off. As of this April, 15 projects had achieved completely commercial funding and 77 had found major private cofunding. As a result, IPP does not have unobligated funds lying around.

Now is not the time to cut the IPP program. Rather, we should encourage IPP and the many weapons specialists in the former Soviet Union who are searching for new careers in the civilian economy, by maintaining IPP's funding stream.

The ''nuclear cities'' initiative is an effort to improve employment opportunities for Russian personnel from their nuclear weapons labs and manufacturing facilities. This initiative, too, will focus on finding commercially viable projects and bringing in outside investors. The challenge is to find projects that can work at these somewhat isolated cities, which are more or less the Russian equivalent of Los Alamos.

When we fun the ''nuclear cities'' initiative, we get two benefits. First, Russia's Minister of Atomic Energy has announced that they will downsize their nuclear weapons establishment. And second, by providing civilian job opportunities for the personnel who are let go, we will help protect against Russian weapons specialists going off to work for programs in states like Iran, Iraq or Libya.

The ''nuclear cities'' initiative was developed by a group of U.S. and Russian specialists, and was endorsed at the last meeting of the Gore-Chernomyrdin commission. Later this spring, Energy Secretary Peña and Russian Atomic Energy Minister Adamov also endorsed it.

According to the group that developed this new initiative, it can usefully spend up to $30 million in fiscal year 1999. I don't know how much the executive branch will want to devote to ''nuclear cities,'' but my amendment gives them the opportunity to fund a realistic program.

By earmarking funds both for the ''nuclear cities'' initiative and for the IPP program, moreover, we make sure that the price of the new initiative will not be the death an existing program. If there is clear overlap between the IPP program and the ''nuclear cities'' initiative, such overlap should be eliminated. But I have the distinct impression that there are excellent IPP projects that will have nothing to do with Russia's ''nuclear cities,'' and such projects should not be sacrificed.

Once again, I thank and congratulate the senior Senator from New Mexico and the senior Senator from Nevada. They have given us a fine example of bipartisan cooperation and effectiveness.

Mr. BYRD. Mr. President, I rise today in support of the Fiscal Year 1999 Energy and Water Development appropriations bill. This is a bill that addresses many of our Nation's most critical water infrastructure requirements, as well as important energy research functions, and management of our nuclear waste and environmental remediation programs. This bill is also a component of our national security portfolio, due to the atomic weapons production programs of the Department of Energy that are funded in this bill.

In approving the recommendations of the subcommittee, the committee has reported a bill that does an excellent job of balancing the many competing demands which fall within the jurisdiction of the Energy and Water Development Subcommittee. I wish to commend the subcommittee chairman, Senator DOMENICI, for all his hard work in crafting the bill brought before the Senate, together with his very able counterpart, Senator REID. While both of these Senators come from the arid west, where the water management issues are very different from the challenges facing other regions of the country, they have been very responsible in trying to maintain critical investments in flood control and navigation and irrigation, while also ensuring that our energy research and nuclear waste management and weapons production responsibilities are met.

Their task was made particularly difficult this year by the disgraceful budget request for Fiscal Year 1999 put forward by the administration for the Army Corps of Engineers. Despite strong support for an aggressive Corps construction program from both sides of the aisle and all regions of the country, the administration proposed a significant reduction in spending for Corps construction—some $689 million, or 47 percent, below last year's funding level.

This budget gap created a huge hole that needed to be filled, and I commend our committee chairman, Senator STEVENS, for his sensitivity to the challenges presented to the Energy and Water Development Subcommittee by the President's request. Senator STEVENS knows all too well the value and need for critical infrastructure investments that will help communities enhance their economic opportunity. I was pleased to join with the chairman in recommending a 302(b) allocation to the Energy and Water Development Subcommittee which was substantially above the President's request and above a freeze for the non-defense discretionary portion. Nonetheless, the requests for funding far exceeded the subcommittee's allocation.

Nearly every state had ongoing water projects that the Corps expressed a capability of being able to execute at a program level far in excess of the President's request. So to try and maintain ongoing projects, as well as to protect investments, funding was added to many of these projects. The costs associated with the administration's short-sighted proposal were considerable. Not only would there have been increased costs due to the additional time it would have taken to complete projects, but there would also have been considerable contract termination costs associated with ending or reducing work that had been initiated recently.

So I commend the subcommittee members for their fine work. Their responsiveness to local concerns will mean a great deal to the communities in my state that were on the short end of the administration's budget. In places like Marmet, the Greenbrier Basin, and the Tug Fork Valley, where people have been waiting years for assistance from the Federal government to improve upon flood control and enhance navigation channels that feed our economy, this bill will be of great assistance. I have seen the mud, muck, and misery that accompany flooding when the waters rise in the creeks and streams and rivers that flow through the mountains of West Virginia. Some criticize these types of projects. I contend that they are critical to improving the lives and enhancing the safety of our constituents.

Mr. President, as is true with most appropriations bills, not every Senator has 100 percent of his or her priorities addressed fully. That is the very essence of compromise and balance, which are at the center of what it takes to produce an acceptable, and signable, appropriations bill. The President, in gutting the Corps' construction program, proposed significant increases to programs favored by the administration. But every Senator should be clear that, to pay for those increases, the President proposed reductions in funding requested for flood protection and other water infrastructure development. I commend Senator DOMENICI and Senator REID for trying to maintain stability across the multitude of programs funded in this bill.

Finally, I wish to acknowledge the very fine work done on this appropriations bill by the majority and minority staff of the Energy and Water Development Subcommittee—Alex Flint, David Gwaltney, Greg Daines, Liz Blevins, Lashawnda Leftwich, and Sue Masica. There are many details associated with all of the water projects and energy research items in this bill, and this team does an excellent job of serving not only Senators DOMENICI and REID, but also all other Senators.

Mr. GLENN. Mr. President, I rise today to make a few comments concerning S. 2138, the Fiscal Year 1999 Energy and Water Development Appropriation Bill.

The West Columbus Floodwall Project is an extremely important infrastructure project currently under development by the City of Columbus and the Army Corps of Engineers. Once completed this project will protect over 2,800 acres of urban development, and approximately 6,200 homes and businesses. Construction of this $118 million project was initiated in 1993 and was on schedule and budget for completion in 2002.

The fiscal year 1999 civil works budget request for the U.S. Army Corps of Engineers provided only $1.8 million for continued construction of this important project. The Committee increased the fiscal year 1999 funding to a total $7.5 million. Although I am grateful for the Committee's action, I am concerned because this project requires $16 million to keep it on track and moving forward.

Mr. President, this project is unlike a lot of other flood projects in that it does not provide vitally needed flood protection for West Columbus until it is fully completed. Funding for this project at less than $16 million could delay it for up to one year and this area will continue to be exposed to an increased potential for flood damages of up to $455 million. In addition, the homeowners and businesses in this area will face continued zoning restrictions, and development of 2800 acres will be delayed.

The city of Columbus has been damaged in the past by severe flooding of the Scioto River, which runs through the heart of its downtown. In 1913, 1937 and 1959, the city was devastated by flood disasters resulting in millions of dollars in damage to commercial and residential property, destruction of homes and businesses, and the loss of many lives. In 1990 and 1992, the city again experienced serious flood scares. If the West Columbus project were in place during previous recent flood events, damages would have been prevented.

Mr. President, during the December 1990 rainfall and flood event, inundation and localized flood damages occurred in the Phase 1B/McKinley Avenue area. The Scioto River rose to a flood level approaching a 20-year frequency. If the project features had been in place at that time, the interior runoff would have drained to the stormwater pump station ST–8 and would have been pumped out of the interior. Instead, an existing storm sewer flap gate was held shut by the high Scioto River flood stage, preventing the interior runoff from draining to the river. Adjacent businesses were flooded until the Scioto River receded to a level that permitted the flap gate to open and allow interior runoff to drain to the river.

During the July 1992 storm, rainfall in excess of 4 inches fell over the interior area along with a moderate rise in the Scioto River. An existing storm sewer flap gate was held shut and interior runoff could not drain to the river. If the proposed Dodge Park stormwater pump station had been available, it could have pumped excess runoff to the river, thus preventing flood damages that occurred along Rich Street.

Mr. President, I understand that sufficient funding was not available for the many critically needed flood protection projects contained in this bill. For this reason I will not offer an amendment, however, I thought it was important to express my concerns and address the potential impacts of not funding this project at the required level of $16 million. I am pleased that the House was able to fully fund this project in their bill and it is my hope that during Conference, the Senate will recede to the House's position and provide $16 million for the West Columbus Floodwall Project.

Thank you, Mr. President.

Mr. LIEBERMAN. Mr. President, I rise to express my concern about the portion of this bill dealing with the Nuclear Regulatory Commission, and particularly the Committee report. While I appreciate that Senators DOMENICI and REID have made very significant changes to an earlier version of the report, I remain troubled.

Let me say first that I am a supporter of nuclear energy. I believe it can be part of the solution to solving the world's energy, environment and global warming problems. But in order for there to be a future for this industry, it is critical for the public to maintain confidence in the industry—a confidence that must be supported by a strong, competent and effective Nuclear Regulatory Commission.

I do not believe that the current NRC over-regulates, inspects too much, enforces too much or has adopted an overly restrictive body of regulations. I base this conclusion on the extensive oversight I conducted as chairman during the 103rd Congress of the Clean Air and Nuclear Regulation subcommittee of the Environment and Public Works Committee; the oversight work I have conducted during the last three years as a member of the Environment Committee, particularly growing out of my concern about the shutdown of Connecticut's nuclear power plants; and two extensive reports prepared for me by the General Accounting Office.

In fact, I believe that as a result of new safety initiatives undertaken by NRC Chairman Jackson, such as: limiting inappropriate use of enforcement discretion; requiring utilities to verify whether they are operating in accordance with their design basis; undertaking a review of NRC oversight of changes made by utilities without prior NRC approval; improving the inspection process;, increased attention to use of quantitative performance indicators; and reforms of the senior management oversight process, the NRC has finally moved toward regaining some of the public confidence which is so important. Also critical to restoring this confidence has been Chairman Jackson's openness and responsiveness to the public, including whistleblowers. Many of these initiatives came in response to a very unfortunate situation in Connecticut, where the nuclear power plants were shut down and put on the NRC Watch List of most troubled plants.

I appreciate that the Appropriations Committee believes that there should be an in-depth review of the NRC. As a member of the Senate Environment Committee with authorization oversight responsibilities, I have been urging the Committee to conduct hearings on the NRC since the start of the Congress. In particular, I have urged the Committee to hold a hearing to examine the issues raised in two General Accounting Office reports : one prepared for Senator BIDEN and me, Nuclear Regulation: Preventing Problem Plants Requires More Effective NRC Action, and one prepared for Congressman DINGELL and me on whistleblower protections.

The GAO raised serious concerns about instances in the past in which the NRC has neither taken aggressive enforcement action nor held nuclear plant licensees accountable for correcting their problems on a timely basis. The GAO criticized the NRC for problems in the inspection process, such as not including timetables for the completion of corrective action and for not evaluating the competency of the licensees' plant managers as part of the on-going inspection process. In addition, the GAO found that the senior management meeting, designed to focus attention on those plants with declining safety performance, was not serving its goal of being an early warning tool.

To her credit, Chairman Jackson has responded to many of these GAO recommendations positively and swiftly. Nevertheless, oversight hearings are needed to evaluate the NRC's responses.

Finally, although I appreciate that the Committee increased the NRC's funding levels from the subcommittee's approach and eliminated any directions to cut nuclear reactor safety, I am still concerned that the bill includes $17.3 million less in funding than the NRC's budget request. I think a more prudent approach would be to have a detailed discussion of the NRC's proposed initiatives in the authorizing

Environment Committee to avoid any negative impact on the NRC's ability to maintain a strong, healthy regulatory program for nuclear power plants or to limit any new initiatives that the NRC believes are important. In the 103rd Congress, I was pleased that we were able to report an authorizing bill for the NRC, but unfortunately it did not become law. We need to move forward again with such a bill.

TOOELE CITY WASTEWATER TREATMENT AND REUSE PROJECT

Mr. BENNETT. Mr. President, I would like to ask the distinguished Senator from New Mexico, the Chairman of the Energy and Water Subcommittee, a question related to a project in my State. Am I correct in stating that the bill before the Senate today contains $3 million in funding for the Tooele City Wastewater Treatment and Reuse Project?

Mr. DOMENICI. The Senator is correct.

Mr. BENNETT. Mr. President, I appreciate the Senator from New Mexico's support for this project. I have recently become aware of a problem with this project related to the Bureau of Reclamation's interpretation of the project's authorization which I hope we can clarify. As the Senator knows, I am a strong advocate for the concept of water recycling and reuse. In arid States such as ours we simply have to make every gallon of available water stretch as far as we can. It is for that reason that I sponsored the legislation that eventually became Public Law 104–266. The passage of that legislation expanded the Bureau of Reclamation's water recycling program and authorized the Tooele City project. Under this program the Bureau is authorized to contribute up to twenty-five percent of the cost of planning, designing and constructing water recycling and reuse projects.

The Tooele Wastewater Treatment and Reuse project is designed to reclaim 2.25 million gallons of effluent daily and utilized the reclaimed water for a variety of non-potable uses permitted by Utah State law. Unlike some other States, Utah permits the utilization of water treated to secondary—as opposed to advanced secondary or tertiary—standards for certain non-potable uses. In formulating the Tooele project, the City has always anticipated the utilization of secondary effluent in conformance with State law. Now the Bureau of Reclamation has informed the City that it will not provide funds appropriated by Congress for that portion of the Tooele project that provides secondary treatment. I have searched the authorizations for the Title XVI program and the Tooele project high and low and can not find a statutory basis for the Bureau's position. Had Congress wished to limit the use of title XVI funds in this manner, it certainly could have done so. It did not.

Mr. President, I remain hopeful that we can resolve this matter before this bill goes to Conference. However, in the event that we are not successful, I would like to ask the Chairman to entertain the possibility of Conference Report language, if necessary, to clarify this matter.

Mr. DOMENICI. I appreciate the Senator from Utah's concerns. I would be happy to work with him to resolve this issue.

RODEO LAKE

Mr. GORTON. Mr. President, I rise for a brief colloquy with the manager of the bill. I would like to thank the chairman for his generous work to fund the Rodeo Lake project near Othello, Washington. This project will help alleviate a serious flooding problem in Central Washington state. There has been some confusion, however, regarding the Corps of Engineers' involvement in the project. I understand that, because of the water at Rodeo Lake directly affects projects maintained by the Bureau of Reclamation, the committee intends for the Corps to coordinate its efforts with the Bureau of Reclamation. Is my description of the committee's intentions correct?

Mr. DOMENICI. The Senator is correct.

Mr. GORTON. I thank the Chairman for the clarification and for the hard work on this bill.

DEVILS LAKE, NORTH DAKOTA

Mr. CHAFEE. Mr. President, page 44 of the committee report accompanying S. 2138, the fiscal 1999 Energy and Water Development Appropriation bill, includes a section on funding provided in the bill for construction of a flood control outlet at Devils Lake, North Dakota. At the end of the short section, the committee report states that, ''[i]t is expected that such circumstances would also be such that granting of a waiver under the emergency provision of the National Environmental Policy Act would be appropriate and that the provision of the 1909 Boundary Waters Treaty would be met.''

I am trying to understand how this report language corresponds with language in the bill for Devils Lake. As reported by the committee, pages 6 and 7 of the bill lay out a detailed set of rigorous criteria that must be met before any funds can be obligated by the Secretary for actual construction of the outlet. Two of those criteria, full compliance with the National Environmental Policy Act (NEPA) and the 1909 Boundary Waters Treaty seem to be preempted by the committee in this report. I ask the distinguished chairman of the Energy and Water Development Subcommittee, Senator DOMENICI, if the committee report language in any way supercedes the bill language? Moreover, is the committee attempting to provide a waiver or some form of relief under NEPA or the Boundary Waters Treaty?

Mr. DOMENICI. I thank the Senator from Rhode Island for his continued interest and involvement in the Devils Lake matter. The answer to both of the Senator's questions is ''no.'' The bill language that you cited, which was originally negotiated by the two of us, Senator BOND and our colleagues from North Dakota last year, would be fully applicable. The committee report does not waive NEPA, the Boundary Waters Treaty or any of the other conditions found in the bill language. In summary, the Executive Branch would need to fulfill the economic and technical justifications, the reporting and budgeting requirements, as well as the NEPA and Boundary Waters Treaty terms, before any of the appropriated funds can be expended for outlet construction. The report language signals our expectation that the Executive Branch would make full use of the emergency provision currently available under NEPA and that all steps would be taken to expeditiously fulfill the requirements of the Boundary Waters Treaty in the event that rising lake levels warrant accelerated construction of the outlet.

Mr. CHAFEE. I appreciate my colleague's clarification. I chaired a hearing on Devils Lake before the Committee on Environment and Public Works late last year and am committed to addressing the terrible flooding problems experienced there. However, I am convinced that the people of North Dakota, Minnesota, Canada, and the U.S. taxpayers will all be served more effectively if we go about this project in the right way. To do that, we need the appropriate reviews, studies and justifications by the Army Corps of Engineers, State Department and others. In that context, Mr. President, I ask unanimous consent to include in the CONGRESSIONAL RECORD a January 28, 1998, Army Corps memorandum, signed by the then-Acting Assistant Secretary John H. Zirschky, that details the agency's policy on NEPA compliance and the proposed outlet at Devils Lake. I ask unanimous consent that the memorandum be printed in the RECORD.

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

DEPARTMENT OF THE ARMY, OFFICE OF THE ASSISTANT SECRETARY, CIVIL WORKS,

Washington, DC, January 28, 1998.

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

Subject: National Environmental Policy Act Compliance, Devils Lake Outlet, North Dakota

The Corps has been working hard to solve the flooding problems at Devils Lake. The St. Paul District has been raising the levees at the city of Devils Lake and the design of an emergency outlet is well underway. I commend your staff, Mississippi Valley Division and the St. Paul District for their accomplishments to date.

A statutory requirement for constructing an outlet from Devils Lake is compliance with the National Environmental Policy Act (NEPA). On December 10, 1997, the Corps briefed my staff and a representative of the Office of Management and Budget (OMB) on the proposal for compliance with NEPA. On December 19, 1997, my staff briefed senior

staff of the OMB and the White House Council on Environmental Quality (CEQ) on the proposal.

The purpose of the December 19, 1997 meeting was to discuss the St. Paul District's ''expedited'' schedule for NEPA compliance. That schedule calls for constructing the outlet before the NEPA process is completed. This is an exception that would require a waiver from the normal NEPA process. While the flooding problem at Devils Lake is an emergency, and while adoption of a NEPA compliance process completed following construction may be necessary at some point in time, the decision to carry out a NEPA process as outlined in the District's ''expedited'' schedule is considered premature. Supporting a waiver at this time is difficult since we have not yet decided to construct the outlet nor have we completed its design. The controversial nature of the outlet project, and the extent of other ongoing activities by the Corps and others to mitigate for the flooding were also factors in this decision.

It is critical that the Corps continues to keep this project as a high priority. We should proceed with the planning, NEPA compliance, and design of the outlet as quickly as possible. The studies and report being prepared to comply with the Fiscal Year 1998 Energy and Water Development Appropriations Act should also be expeditiously completed. To ensure that the report complies with the congressional directives, it should be subjected to technical and policy reviews before submitted to this office. We should also continue to budget for the outlet.

It is also very important that the NEPA process complies fully with the July 1, 1997, memorandum from the CEQ on transboundary impacts of the outlet project. Likewise, the NEPA process should be undertaken so that it will give us a sound basis for consultation with the International Joint Commission, and with Canada under the ''Boundary Waters Treaty of 1909.''

At this time, we should not plan to use a NEPA process that assumes that we construct the outlet before the NEPA process is completed. Our objective is to comply fully with the NEPA by completing the Environmental Impact Statement and Record of Decision using a normal NEPA process. In this regard, on January 12 our staffs developed guidance that allowed the St. Paul District to initiate the NEPA scoping process on January 14, 1998. The District should revise the schedule they proposed for the ''normal'' NEPA process, and identify opportunities to complete this work by December 1999. While I understand that the coordination phase of the NEPA process may be time dependent, I believe that ways to shorten the data collection and evaluation phases can be found to shorten the current forty month schedule. Regarding data collection and evaluations, these activities should be programmed in a way that will provide us with increasingly greater levels of detail, so that we can decide, if necessary, to start the outlet at anytime using an emergency NEPA process. Unless an emergency waiver is obtained sooner, we should be in a position to start construction by Spring 2000.

The enclosed paper was prepared to help explain the ''Action Plan.'' This plan will allow the Corps to meet its legal obligations, make more informed decisions by maximizing the use of new information on both lake level predictions and environmental impacts, and stay positioned to start construction on the outlet when necessary. I ask that HQUSACE provide the leadership necessary to achieve these objectives.

JOHN H. ZIRSCHKY,
Acting Assistant Secretary of the Army (Civil Works).

Enclosure.

DEVILS LAKE EMERGENCY OUTLET, NORTH DAKOTA NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE ACTION PLAN

National Environmental Policy Act (NEPA) compliance is an integral part of the decision making process for the Devils Lake outlet. To be able to construct the outlet as soon as possible—yet comply fully with NEPA—the Corps will use the following principles:

PRINCIPLES

Reducing flooding at Devils Lake is a high priority for the Administration.

Engineering and design work on the outlet will proceed on schedule, allowing the start of construction, if necessary, by May 1999.[1]

A decision to start construction on the outlet will be based on the best available information and be legally defensible.

A decision to start construction will comply with the Fiscal Year 1998 Energy and Water Development Appropriations Act, and other laws and treaties; and

National Environmental Policy Act compliance will proceed on a fast track.

ACTION PLAN

From an engineering standpoint, the Corps St. Paul District believes it can be in a position to start construction of the outlet by may 1999. To meet this date, the design of the outlet should be completed by August 1998 and pipe should be ordered in October 1998. By August 1998, the Project Cooperation Agreement should be ready to be executed with the State of North Dakota. The State could then be ready to acquire lands needed for the project. The report necessary to comply with the Fiscal Year 1998 Energy and Water Development Appropriations Act is scheduled to be prepared, reviewed and approved in time to be submitted to Congress by August 1998. Plans and specifications are to be completed by march 1999. The Corps would continue to budget for funds for design and construction of the outlet.

Regarding the NEPA compliance, several options were considered, including starting construction before the NEPA process is completed. Starting construction before the NEPA process is completed requires a Council of Environmental Quality waiver from the normal NEPA compliance process under the emergency provision of NEPA. Such waivers are unusual and require substantial justification. Without such justification the legal risk would be great given the diverse interest and positions on the outlet. In view of the stipulations in the Fiscal Year 1998 Energy and Water Development Appropriations Act that must be met before construction can be started and that the design of the outlet is not yet complete, we believe that it is premature to make the waiver decision at this time and that we should proceed with the NEPA process. However, in view of the lake level trends of the past few years at Devils Lake, the NEPA review would be expedited, and NEPA compliance activities would be organized in a tiered fashion that will maximize its utility at any given time regarding a decision to start construction on the outlet through the emergency NEPA waiver. This approach should not result in an unacceptable slow down of outlet construction, if necessary, since the engineering and design work will be completed on schedule.

The St. Paul District initiated the formal NEPA process on October 21, 1997, and an initial scoping meeting was held on January 14, 1998. unless a waiver from NEPA is needed sooner, the goal is to complete the NEPA process by December 1999*. As noted above, NEPA data collections, evaluations, impact assessments, and coordination activities should be programed to be concurrent, at minimum allowed times, and at increasingly greater degrees of detail, so that we can save time and make more informed and supportable decisions regarding carrying out the outlet under an emergency NEPA process, if necessary. As an example, the question of the need to start construction under an emergency NEPA process can be revisited after the 1998 runoff predictions are released and the Corps has completed the report required by the Fiscal Year 1998 Energy and Water Development Appropriations Act.

In summary, this action plan allows the Corps to meet its legal obligations, make more informed decisions by maximizing the use of new information on both lake level predictions and environmental impacts, and stay positioned to start construction on the outlet when necessary.

OASA (CW) POC:

MICHAEL L. DAVIS,
Deputy Assistant Secretary of the Army (Policy and Legislation).

JAMES J. SMYTH,
Assistant for Water Resources Development.

[1] Unless otherwise stated, completion and submission dates presented in this paper are those developed by the St. Paul District of the Corps of Engineers. New dates are noted by ''*'' after the date.

ASSATEAGUE ISLAND

Mr. SARBANES. Mr. President, I would like to engage the distinguished Chairman of the Subcommittee in a colloquy concerning funding for the restoration of Assateague Island National Seashore.

I am deeply concerned that the Committee was not able to provide funding for so-called ''new start'' construction projects of the Army Corps of Engineers. I understand that the House Committee has also adopted a no new starts policy. The Corps of Engineers was scheduled to initiate an authorized and approved mitigation project for the North End of Assateague Island National Seashore in Fiscal 1999 and without funding, it appears that this project will have to be postponsed. This is a particular problem because the northern end of Assateague was hit very hard by two northeastern storms which slammed the mid-Atlantic coast this past February causing severe erosion and overwash conditions. In its current condition, the seashore is extremely vulnerable to breaching should another storm hit the coast. The integrity of the National Seashore and the area's coastal bays are at risk.

Fortunately, the Corps will be able to make emergency repairs to the storm-damaged section under the authority of Public Law 84–99, providing some additional protection to the island over its current condition. But it would be far better if the approved restoration project could be initiated and completed as soon as possible.

I recognize the difficult constraints that the Committee faced in crafting this bill but, given the critical nature of this project, I ask if the Chairman would be willing to work with me and Senator MIKULSKI in the Conference Committee to address Assateague's needs should additional funding become available.

Mr. DOMENICI. The Committee understands the importance of this project and will work in Conference to see what develops.

Ms. MIKULSKI. I thank the Chairman for his consideration of this project. Assateague is one of the most important restoration projects in Maryland. The environmental, economic and ecological value of the Assateague Seashore is extraordinary. It is not just a Maryland priority, it is a national priority.

Mr. SARBANES. I thank the Chairman for these assurances.

TRANSFER OF THE ST. GEORGES BRIDGE

Mr. BIDEN. Mr. President, I am wondering if the Ranking Member of the Subcommittee will engage in a colloquy with me regarding the St. Georges Bridge in my State of Delaware.

Mr. REID. I would be pleased to yield to my colleague from Delaware.

Mr. BIDEN. I thank my friend. Mr. President, recently in the newly passed highway bill, TEA–21, the Secretary of the Army was directed to transfer the right, title and interest of the St. Georges Bridge in Delaware, to the State of Delaware. The transfer is necessary to facilitate a retransfer of the bridge to a private entity for the purposes of demonstrating the effectiveness of large-scale composites technology. If the transfer is completed within 180 days the Secretary is directed to provide $10,000,000 to the State for rehabilitating the bridge.

I rise to ask the Senator from Nevada, in his capacity as Ranking member of the Subcommittee, to seek his commitment in working with me and the Army Corps of Engineers to ensure that this transfer and the $10 million payment occurs as authorized.

Mr. REID. Yes, I am aware of the transfer of the bridge and the provision in TEA–21. You have my pledge that I will do all I can to see that the Army Corps of Engineers will carry this out as soon as possible.

Mr. BIDEN. I thank the Senator.

GRAND PRAIRIE REGION, ARKANSAS

Mr. BUMPERS. Mr. President, I would like to engage the senior Senator from New Mexico in a colloquy.

Mr. DOMENICI. I would be pleased to join the senior Senator from Arkansas in a colloquy.

Mr. BUMPERS. Mr. President, many of us in Arkansas have been working for several years to reverse a critical ground water resource problem that is developing in our region and will ultimately affect the entire country.

Throughout this century, aquifers in the lower Mississippi River Valley have been falling due to high demand and relatively low recharge. The United States Geological Survey has found that current trends by the year 2015 will reduce the saturated thickness of the aquifers to the point that soils will begin to compact, recharge will not be possible, and the aquifer will effectively be dead, along with nearly half of the U.S. rice industry. Because of the magnitude of this problem, state and local efforts to correct it will never succeed without assistance from the federal government. In that event, a regional economic collapse will occur, a major environmental resource will forever be lost, and our legacy to future generations will carry a lasting shadow of irresponsibility.

The President's Budget Request provided $11.5 million for the Grand Prairie Region. I understand the difficulty the Senate Energy and Water Appropriations Subcommittee faced in trying to fund many worthwhile projects. Unfortunately, the Grand Prairie Project was not funded in this bill. It is also my understanding that the House Energy and Water Appropriations Bill provides the full Budget Request of $11.5 million for the Grand Prairie project.

I ask the Chairman, Senator DOMENICI, for his support in accepting the House level when this legislation is considered in conference.

Mr. DOMENICI. I thank the Senator from Arkansas for his comments. The Senator is correct. The Subcommittee had great difficulty in providing funds for several needed and worthwhile projects. I understand the importance and national significance of the Grand Prairie Project and pledge my support in conference for Grand Prairie if there are sufficient resources.

Mr. BUMPERS. I thank the Chairman for his efforts.

Mr. LEAHY. Mr. President, I would like to engage the Chairman in a colloquy. Last year, the Senator and I discussed the energy generation problems facing rural areas of the United States. The Chairman wisely included funding in the Fiscal Year 1998 Energy and Water Appropriations bill to address this problem. In rural areas, energy distribution systems are often more difficult and expensive to establish. As a result, communities are often forced to rely on more polluting fuel sources because they have lower up front capital costs. The Jeffords amendment the Chairman accepted this morning increases funding for the Remote Power Initiative to $5 million. Is that correct?

Mr. DOMENICI. Yes, the Senator is correct. In Fiscal Year 1998 and 1999 we included funding for the Remote Power Initiative to support deployment of solar, wind, fuel cell, biomass, and other energy technologies in remote areas to address their energy challenges. Last year, you highlighted the energy demands and environmental constraints of ski area operations as one example of this problem facing remote areas. As you noted, ski areas in Vermont were one of the leading sources of NO_x emissions due to use of inefficient and polluting diesel engines for operations. This is the kind of problem the subcommittee had in mind when proposing the Remote Power Initiative.

Mr. LEAHY. I want to thank the Chairman for including funds for the Remote Power Initiative again this year. This Initiative offers the Department of Energy an opportunity to build partnerships with the ski industry to deploy efficient and environmentally-friendly renewable energy technologies to reduce energy use and emissions. Partnerships could also involve environmental technology vendors and service providers who may be interested in cost sharing.

Mr. DOMENICI. I agree with the Senator from Vermont and believe there is a real need to address remote power problems in cold weather areas. I support using some of the funds in the Remote Power Initiative for the purposes you described.

Mr. LEAHY. I thank the Chairman and look forward to working with him and the Department of Energy to bring together ski operators and the renewable energy technology industry to discuss technology and policy issues, and determine appropriate actions and next steps.

BIOMASS ETHANOL RESEARCH

Mrs. FEINSTEIN. Mr. President, I wish to ask a question of the chairman of the subcommittee, the Senator from New Mexico, and the ranking member of the subcommittee, the Senator from Nevada; is it the understanding of the chairman and ranking member that there are enough funds available in the Solar and Renewable Resources Technologies/Biofuels Energy Systems account to continue the feasibility study and project development of a biomass ethanol plant in Plumas County, California?

Mr. DOMENICI. That is correct. Funding is available under this bill for the Department of Energy under the Biofuels Energy Systems account that could be used to study the feasibility of the Plumas County project.

Mr. REID. That is my view as well. I would urge the DOE to consider supporting this project in fiscal year 1999.

Mrs. FEINSTEIN. I thank the Senators.

Mr. BENNETT. Mr. President, it is my understanding that western states and the western electric power industry have been engaged in intensive efforts to create a competitive and reliable western electricity market covering all or parts of 14 states, two Canadian provinces and northern Mexico. I believe this is exactly the type of local cooperative action Congress hoped for in the enactment of the Energy Policy Act of 1992. I ask the Chairman, does the budget contain funds to help western states work with the electric power industry to promote competitive and reliable electricity markets in the Western Interconnection?

Mr. DOMENICI. The Senator is correct.

Mr. BENNETT. Is it the Committee's intent that the Department of Energy is to give priority in the expenditure of such funds to assisting western states which are collectively working with the industry on a gridwide basis to promote competitive and reliable regional electricity markets?

Mr. DOMENICI. The Senator is correct.

Mr. BENNETT. I thank the Chairman.

WESTERN AREA POWER ADMINISTRATION

Mr. BURNS. Mr. President, I understand that the Western Area Power Administration and The Bureau of Reclamation are considering raising rates for the power necessary to operate irrigation systems in the Eastern Division of the Pick-Sloane Missouri Basin Project. The purpose of these agencies is not to raise revenue. Rather, these agencies are designed to provide reliable and affordable power for multipurpose economic development.

Mr. DOMENICI. I agree Senator BURNS, affordable power rates for irrigation districts are vital to all those living in the western United States.

Mr. BURNS. This is especially true considering the recent drought and low wheat prices that we have been experiencing throughout the region. The farmers in this region simply cannot afford the burden that this rate increase will place on them.

Mr. DOMENICI. I understand that the situation now facing many of these farmers and ranchers is dire. You make a very compelling argument against raising rates and production costs for an industry that is already facing disaster.

Mr. BURNS. I thank Senator DOMENICI for his recognition of this problem. I will fully commit myself to working with him to resolve this situation as soon as possible.

Mr. LEAHY. Mr. President, I would like to engage the Chairman in a colloquy. Senator DOMENICI, I would like to thank you and Senator REID for your willingness to boost funding for the Department of Energy's important solar and renewable programs. I am especially pleased to see an increase in funding for the biomass energy systems account. In Vermont, work is continuing at the McNeil Generation Plant in Burlington to demonstrate the effectiveness of biomass gasification. This is an important renewable technology which will help our country reduce greenhouse gas emissions.

Earlier this year the Department of Energy agreed to a modification of the contract for the McNeil project which resulted in a $6 million increase in the Department's contribution to the South Burlington facility. These funds will be matched dollar for dollar by the partners who are participating with DoE in this important renewable program. Because the contract modification was not reached until after the President had submitted his Fiscal Year 1999 budget proposal, that increase was not reflected in the funding request for the biomass energy systems account. It is my understanding that the increase in funding for biomass energy systems includes the $6 million needed for the Department to meet its obligations under the contract for the McNeil facility.

Mr. DOMENICI. I concur with the Senator from Vermont as to the importance of the Vermont gasifier. I concur that it would be desirable to provide funds for that project. In conference, as we reach agreement with the House on the allocation of funds for Biomass, I will work to provide that funding.

Mr. BINGAMAN. Mr. President, I rise in support of the energy and water development appropriations bill and to take a few moments to engage in a colloquy with the chairman of the subcommittee on one of the many important programs being funded in the bill. That would be the technology transfer and education programs funded under Atomic Energy Defense Activities. These programs are an important investment in the future of the country, by leveraging the facilities, expertise, and R&D results funded by the Department's defense missions to the benefit of broader national science, technology, and education objectives. We have seen some important spin-offs over the years from DOE defense-related research, and this funding will ensure that we continue to see both spin-off and the flow of technology, ideas, and trained personnel into the labs, to the benefit of the Department's important statutory missions.

One example of a technology partnership area of importance, and which I hope the Department will fully fund in fiscal year 1999, is the Advanced Computational Technology Initiative, or ACTI. The ACTI program makes available to smaller oil and gas producers the computational and simulation resources of the national laboratories. One component of the ACTI program over the years, the Advanced Reservoir Management program, has funded advances in complex computational database management and electronic information systems that have been of benefit both to the oil and gas industry and DOE's defense programs.

I know that my colleague from New Mexico, the chairman of the subcommittee, is a strong supporter of our oil and gas industry. I would urge him to maintain funding of the ACTI program at the level of the President's request as this bill moves forward to conference.

Mr. DOMENICI. I completely agree with my colleague. We are united in our support for the oil and gas industry in New Mexico. The bill that I have brought forward today provides full funding for the ACTI program at the President's requested level. The program is one of a series of technological partnerships between the DOE national laboratories and industry which are producing real value to the U.S. economy. I plan to maintain this strong support for ACTI and other technology partnerships at DOE as this bill moves forward to enactment.

Mr. CAMPBELL. I thank my colleague, Senator INHOFE, for engaging in this dialogue to clear up confusion surrounding section 3(b) of S. 1279, the Indian Employment, Training and Related Services Demonstration Act Amendments of 1998.

Mr. INHOFE. What exactly does section 3(b) of S. 1279 purport to do?

Mr. CAMPBELL. It attempts to clarify inconsistencies in implementing Public Law 102–477. Over the past four years, tribes have attempted to integrate both programs into their 477 plans. They have received at best, inconsistent responses from the BIA. On several occasions the Bureau approved the integration, and other times integration was rejected. The Bureau confirmed this confusion at a May 13, 1997 Indian Affairs Committee hearing when it submitted conflicting testimony regarding its approval of including the JOM program into tribal plans. Section 3(b) makes clear that ''at the option of a tribe'' funds under both the General Assistance and Johnson O'Malley programs may be integrated into tribal 477 plans.

Mr. INHOFE. Is it true that your bill will not affect in any manner the current regulations and requirements established by the Department of the Interior with regard to the Johnson O'Malley program?

Mr. CAMPBELL. That's correct. In fact, I have here a letter from the Assistant Secretary of Indian Affairs, which states that while they support section 3(b)'s integration of Johnson O'Malley, ''the program must continue to be conducted in accordance with its authorizing statute.'' Another letter dated March 28, 1998 states that the JOM parent committee will continue to have the authority to approve and disapprove tribal plans to integrate funds within the 477 program. I ask unanimous consent that each of these letters be placed in the record.

Mr. INHOFE. The Johnson O'Malley program is a supplemental education program designed to benefit Indian children aged 3 through grade 12 attending public schools. I'm concerned that permitting tribes the option to use these funds within employment and training plans will permit tribes to instead use these funds for post-high school adult employment training programs.

Mr. CAMPBELL. I agree with your concern, and that is why I amended the original language of the bill to expressly require tribal governments wishing to integrate these funds into their 477 programs to include adequate assurances that such funds will be used only for those intended beneficiaries, children aged 3 through grade 12. I would, however, like to make clear that with the onset of welfare reform upon us, tribal governments must be afforded adequate flexibility to administer the limited federal resources available. This bill attempts to provide that added flexibility.

Mr. INHOFE. I thank Senator CAMPBELL for clearing up these concerns. I'm encouraged by the assurances that the Johnson O'Malley Program will not be adversely affected by this measure.

Mr. DOMENICI. Mr. President, S. 2138, the Energy and Water Development Appropriations Act, 1999, complies with the Budget Act's section

302(b) allocation of budget authority and outlays.

The reported bill provides $20.9 billion in budget authority and $13.1 billion in new outlays to fund the civil programs of the Army Corps of Engineers, the Bureau of Reclamation, certain independent agencies, and most of the activities of the Department of Energy. When outlays from prior year budget authority and other actions are taken into account, this bill provides a total of $20.7 billion in outlays.

For defense discretionary programs, the bill is at its allocation for budget authority and below its allocation for outlays by $2 million. The Senate-reported bill also is below its nondefense discretionary allocation by $38 million in budget authority and $1 million under its allocation for outlays.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be printed in the RECORD.

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

S. 2138, ENERGY AND WATER APPROPRIATIONS, 1999—SPENDING COMPARISONS, SENATE-REPORTED BILL

[Fiscal Year 1999, dollars in millions]

	Defense	Nondefense	Crime	Mandatory	Total
Senate-reported bill:					
Budget authority	12,030	8,909			20,939
Outlays	11,818	8,899			20,717
Senate 302(b) allocation:					
Budget authority	12,030	8,947			20,977
Outlays	11,820	8,900			20,720
President's request:					
Budget authority	12,298	9,003			21,301
Outlays	11,875	9,150			21,025
House-passed bill:					
Budget authority					
Outlays					
SENATE-REPORTED BILL COMPARED TO:					
Senate 302(b) allocation:					
Budget authority		−38			−38
Outlays	−2	−1			−3
President's request:					
Budget authority	−268	−94			−362
Outlays	−57	−251			−308
House-passed bill:					
Budget authority	12,030	8,909			20,939
Outlays	11,818	8,899			20,717

NOTE.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Ms. SNOWE. Mr. President, I rise today in support of the passage of S. 2138, the FY99 Energy and Water Development Appropriations bill. In particular, I thank my colleagues for approving $6 million for U.S. Army Corps of Engineers' funding for the harbor dredge in Portland, Maine.

I have supported the timely advancement of the harbor dredging because of public safety and environmental concerns and the project is the top priority for the state. Portland Harbor badly needs dredging, and it is to the great credit of the Portland Harbor Dredge Committee, made up of officials from the state, local, not-for-profit agencies and the private sector that the dredging project is now ready to begin, at least a year ahead of what the US Army Corps of Engineers expected. Corps officials had already made it clear that the project needed to begin this next winter in order to minimize environmental impacts, but could not be started until environmental determinations were made. The Dredge Committee, working together since 1994, was successful in obtaining the necessary permits, including allowing the bulk of the dredged material from Portland Harbor to be deposited at sea.

As I pointed out in the Budget Committee back in March when I first brought up the harbor dredging during Budget Reconciliation, the Corps project simply could not wait another year for funding to be included in the federal budget. It is to the credit of the state, the surrounding communities and the agencies working for the dredging that the project is ready to begin, and the window for the dredging to occur so as to mitigate the environmental risks, according to the Corps, is from October, 1998 to April, 1999. This should now be possible if the Senate funding level is protected in conference with the House.

I would also like to thank Senator DOMENICI and his Appropriations Subcommittee for federal funding for the Ft. Fairfield levee in rural Northern Maine, and also for including language in the appropriations bill that will allow construction of a levee to protect the town against further flooding. This Corps small flood control project is considered essential to the economic survival of Fort Fairfield. The town has experienced severe flooding over the last several years, and as recently as two months ago, was once again on emergency alert because of river flooding, and some senior citizens had to be evacuated from the their homes.

Back in April 1994 alone, flood waters exceeded the 100-year flood plain and caused an estimated $7 million in property damages to businesses and residences. The town is prepared to embark on a redevelopment project once a levee has been built to prevent future floods. Once again, we thank the appropriations committee for realizing the importance of the levee to me and to this small rural town in Northern Maine.

Mr. REID. The Department of Energy is negotiating a contract involving the Nevada Test Site and the Western Area Power Administration to purchase 5 to 10 megawatts of solar energy on behalf of the Nevada Test Site. A single bidder; the Corporation for Solar Technologies and Renewable Resources, has been selected through a competitive process and the Department is in the process of determining on what terms it should enter into such a contract.

Mr. DOMENICI. I concur with the Senator from Nevada's understanding of the current circumstances regarding the status of that contract. I understand the Department of Energy has engaged in a rigorous review to determine at what price and for what period of time it should enter into such a contract.

Mr. REID. This would be an unusual contract. However, it also offers some tremendous potential. If implemented correctly, this effort could demonstrate the viability of large scale commercial development of solar energy.

Mr. DOMENICI. I have reviewed the current situation and have been in contact with senior officials in the Department of Energy who have provided me with assurances that, while unusual, this contract has been subject to rigorous review and, on balance, is worthwhile because of the value that could be derived from demonstrating the use of solar energy on this scale. For this reason, and subject to the continued review of the Department, I am willing to recommend that the Department proceed with its negotiations on this contract.

Mr. REID. I thank the Senator from New Mexico for his support of this innovative effort and would also like to note the diligent efforts of my colleague from Nevada, Senator BRYAN who has dedicated a great deal of attention to this initiative. I concur with the value he sees in this opportunity as well as the value that may accrue to the Nevada Test Site in its efforts to identify new missions and responsibilities. Solar and renewable energy demonstration is one of those areas for which the Nevada Test Site has unique national capabilities and I look forward to further work in this regard.

ANIMAS-LA PLATA PROJECT

Mr. FEINGOLD. Mr. President, I wanted to make a statement on a matter of concern to me in the FY 99 Energy and Water Appropriations legislation. As my colleagues know, I have long been active in raising Senate awareness about the financial costs of moving forward with development and construction of the full-scale version of the Animas-La Plata project. I am concerned that Section 505 of the legislation before us may require the federal government to proceed with construction of the full-scale project, just at the time when the Congress is about to get additional information from the Bureau of Reclamation about alternatives to that project.

As my colleagues will recall from the debate on an amendment I offered to the FY 98 Energy and Water Appropriations legislation on this matter, the currently authorized Animas-La Plata project is a $754 million dollar water development project planned for southwest Colorado and northwest New Mexico, of which federal taxpayers are slated to pay more than 65% of the costs.

As described in the Committee Report on the legislation now before this body on page 80, the total federal cost associated with this project is now more than $512 million.

Section 505 of this bill starts out sounding like a prohibition on funds for the Animas-La Plata project. It states that none of the money in this bill is to be used ''to pay the salary of any officer or employee of the Department of the Interior may be used for the Animas-La Plata Project.''

However, the bill goes on to say that none of the money may be used for the Animas-La Plata project except in two cases: ''(1) activities required to comply with the applicable provisions of current law; and (2) continuation of activities pursuant to the Colorado Ute Settlement Act of 1988.''

Mr. President, let me be clear, the applicable provisions of current law require the construction of the full project. And though Section 505 of the bill before us is similar to language added by the other body to the FY 98 Energy and Water Appropriations legislation and retained by the Conferees, it was never considered by this body.

Subsequently, Mr. President, I do not believe, as I will discuss in greater detail, that Section 505 reflects either the position of this body or the current status of Animas-La Plata.

I am concerned with Section 505 for two reasons. First, it is not consistent with the activities proposed to be conducted by the Administration with the $3 million in funds it requested for Animas La Plata, funds which are included in this bill.

As I described on the floor last year, in an attempt to resolve the disputes surrounding Animas La Plata, Colorado Governor Roy Roemer and Lieutenant Governor Gail Schoettler convened a discussion process in October of 1996 to resolve issues involving the principal parties in a dialogue about the Animas project in order to reach consensus.

The Roemer-Schoettler process produced two major alternatives for consideration, one construction alternative and one non-construction alternative. As stated in the FY 99 Budget Justification issued by the Department of the Interior for the Animas La Plata project on page 223, ''appropriate implementation activities'' for these alternatives ''will likely depend upon further direction from Congress.''

This body knew that. At the time members voted on the amendment I offered last year to ensure a thorough evaluation, Roemer-Schoettler was concluding and the Interior Department was about to embark on an evaluation of the Roemer-Schoettler alternatives. That evaluation has not yet been completed and given to Congress.

In fact, Mr. President, the Interior Department's Budget Justification for FY 99 makes clear that these analyses are not yet finished. On page 226, it states that ''work proposed for the Animas-La Plata project includes analysis of alternatives developed during the Roemer-Schoettler process and other subsequent activities.'' It continues, ''depending on actions taken subsequent to the development of alternatives through the Roemer-Schoettler process, FY 1999 work could include finishing a study of alternatives, preparing cost share agreements, water rights settlement agreements, and repayment contracts and NEPA, Clean Water Act and other environmental compliance processes.''

Mr. President, this justification specifically says that the Interior Department is not intending to proceed with the original full-scale Animas-La Plata Project in FY 99. The Interior Department, it says, instead wants $3 million in FY 99 to finish a study of alternatives and, depending upon Congressional action and direction, it could undertake a number of activities related to the implementation of alternatives in FY 99.

Not only does Section 505 require the Interior Department to go back to planning and evaluating the old full-scale project, it also fails to recognize the strong message that the Congress, project proponents and project opponents all recognize the full-scale project is dead. After 30 years, and now more than $70 million in appropriations to date, the project costs of full-scale Animas-La Plata are too great, and there are too many lingering substantive questions to proceed with the original design.

The other body has twice voted to terminate funds for the full-scale Animas La Plata project.

Last year, 42 members of this body supported my amendment to require the Interior Department to provide a report to Congress on a revised project plan for Animas-La Plata that would reduce the total cost of the program to the Federal Government, satisfy the Ute water rights claims, and ensure that no funds were expended for construction until a revised project had been authorized by Congress.

The Senior Senator from Colorado (Mr. CAMPBELL) has legislation before this body (S. 1771) to modify the Colorado Ute Water Rights Settlement of 1988 so that the Ute's claims would be satisfied by the construction of only a portion of the facilities that are proposed to be built in the full-scale project. The Senate Indian Affairs Committee and the Senate Energy Committee are expected to hold a joint hearing on that legislation next week. I have concerns about whether that legislation will actually restrict the obligation the federal government to the construction of only a portion of the original project, but I was looking forward to having that discussion in the appropriate venue.

Mr. President, I too have legislatively supported the search for an alternative to Animas-La Plata. In fact, legislation that I introduced on March 13, 1997 cosponsored by the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Oregon (Mr. WYDEN) and sponsored in the other body by my colleague from Wisconsin (Mr. PETRI) and the Congressman from New York (Mr. DEFAZIO), deauthorizes the current Animas-La Plata project and directs the Secretary of the Interior to work with the Southern Ute and Ute Mountain tribes to find an alternative to satisfy their water rights needs.

With all this focus on an alternative, the Senate should not be requiring the Interior Department to proceed with the current project.

So why is Section 505 in the bill, Mr. President? The legislative language seems to cast doubt on the Senate's intentions, and this Senator can only assume that we are appropriating money for the original project because there is some need to provide those who support a construction alternative with the ultimate insurance that it will be built. Should a construction alternative be infeasible, and from a policy perspective it may be so, continuing to sock money away for the original full-scale project provides a rationale for proceeding with the project.

Mr. President, I am not certain how Congress ultimately will decide to proceed on this matter, but we are now engaged in evaluation of alternatives to the full-scale Animas project. I am certain, moreover, that it is within the jurisdiction of this body's Energy Committee to determine the benefits of an alternative Reclamation project. Additionally, it is the responsibility of this body's Indian Affairs committee to make certain that the federal government's legal responsibilities to the Ute tribes under any sort of revised agreement are met. We should let these hearings move forward without legislatively trumping any potential for implementing an alternative through Section 505.

This Senate should not go backward and require the Interior Department to proceed with the full-scale Animas project. We have the potential, if we carry on with the activities the Interior Department proposes to conduct, to achieve significant savings and settle the Ute's claims. The Roemer-Schoettler process generated two alternatives, which the Interior Department is studying. What is clear is that these alternatives have the potential to save the taxpayers between $500–$600 million. These savings will certainly not be realized if we proceed with the full-scale Animas project as required by Section 505.

Mr. LEVIN. Mr. President, I am pleased the managers have accepted my amendment adding funds for two shoreline erosion projects along the Detroit River. The funds provided will allow reconnaissance surveys to go forward to help develop longer term plans for the important ongoing and comprehensive effort to revitalize the Detroit waterfront. I call to the attention of my colleagues that the Detroit River has been named by the Administration as an American Heritage River. Such recognition, combined with attention from the Army Corps and other Federal agencies, will assist in these redevelopment efforts.

The managers have also accepted my and Senator GLENN's proposal to clarify that aquatic ecosystem restoration funds (section 206) can be used for sea lamprey barrier construction. The language in the amendment does not place a limit on the Corps' use of section 206 funds for this purpose. As my colleagues may know, the sea lamprey is a devastating invasive species that has plagued the Great Lakes since it first appeared and these barriers play an important role in preventing this species spread and population growth. The Corps can and should work with the Great Lakes Fishery Commission to place these barriers in the most efficient spots.

In addition, the managers have agreed to accept two important changes affecting contaminated sediments. The first is my and Senator GLENN's recommendation to increase the funds available for development of technology to remediate contaminated sediments. This is a pressing problem in the Great Lakes and across the country as EPA's recently published inventory of sediment quality establishes. The amount provided should help us make some progress in identifying cost-effective means of addressing this difficult pollution issue. The second is making it clear that the Corps can and Congress desires the Corps to spend funds to support the National Contaminated Sediment Task Force. This body was first authorized in WRDA 1992, but no Administration has requested funds to make this Task Force operational. The lack of funding for this body to date and the resulting lack of attention to this important matter must be changed.

I would also note that the Committee has significantly increased the planning assistance to states, as I and my Great Lakes colleagues proposed, and that the Corps should use some of this increase to provide technical assistance, as authorized in section 401 of WRDA, to communities working on developing Remedial Action Plans in Areas of Concern.

Mr. President, the diversion of Great Lakes waters out of the Great Lakes Basin is a matter of great concern to those of us from the Great Lakes region. Earlier this year, a Canadian firm announced plans and received permission from the Ontario Provincial government, permission which has since been withdrawn, to export water from Lake Superior to Asia. Also, the Army Corps has been considering a permit from a company in Wisconsin that wants to use ground water that would otherwise discharge into Lake Michigan for an industrial process then send the wastewater out of the Basin into the Mississippi River watershed. These and other activities, including litigation on the latter action, highlight the need for Congress to reemphasize that existing law prohibits such interbasin transfers, unless the process under the Water Resources Development Act of 1986 is followed.

Last year, the managers accepted an amendment I offered to prohibit the Corps from using appropriated funds to permit a diversion, though it was subsequently dropped in conference. Senators GLENN and FEINGOLD and I had discussed offering a similar amendment to the FY99 bill clarifying that such permitting activities on the part of the Corps, and indeed, all Federal agencies, are prohibited under WRDA 1986 unless the Great Lakes States unanimously approve of any diversion. However, the Senator from Nevada, who also sits on the Environment and Public Works Committee, has offered his assistance on this matter, which needs attention and clarification when and if the Senate prepares and considers a new Water Resources Development Act for 1998. I thank him for that consideration and we will await our next opportunity.

The Committee bill includes some other important items for Michigan and the Great Lakes. They include:

$1.5 million for Corps' public facility research and development to control zebra mussels and other invasive species.

$1 million for solar thermal energy dish/engine field verification, which would support work that has been done by Stirling Thermal Motors in Ann Arbor.

$3 million for accelerated demonstration of federally sponsored research for renewable energy production and environmental remediation project at the Michigan Biotechnology Institute in Okemos.

$.5 million for Great Lakes sediment transport and modeling. The Corps can use these funds to develop models to target Areas of Concern, such as the Saginaw River, for preventive measures to control future sediment loadings,

$39.95 million for operation and maintenance (mainly dredging at 24 harbors, rivers and channels in Michigan), including $1.9 million for Pentwater Harbor, which was not in the budget request.

$.5 million to begin preparation of the general design memo for replacement lock at Sault Ste. Marie.

$6 million for aquatic ecosystem restoration. These funds can now be used to construct sea lamprey barriers, per the accepted amendment mentioned previously.

$70 million more than proposed by the Committee, per the Jeffords/Roth amendment, for solar and renewable energy research and development. This is the amount in the President's budget request.

Mr. President, this is a good bill, despite the budget constraints that the managers faced in putting it together. I look forward to working with the managers and other Committee members on these important matters as they proceed to Conference.

Mr. MCCONNELL. Mr. President, I come to the floor today to engage my distinguished colleague, the Chairman of the Energy and Water Appropriations Subcommittee, Senator DOMENICI, in a colloquy on an issue which could have a tremendous impact on the economies of Paducah, Kentucky and Portsmouth, Ohio.

Mr. President, I am deeply concerned about the magnitude of the job cuts that may occur as a result of the imminent privatization of the United States Enrichment Corporation (USEC). It is my understanding that upwards of 1,700 jobs might be lost once the Corporation is privatized. Further, I am told that 600 jobs could be lost even if USEC is not privatized and continues to operate as a federal corporation. In an effort to mitigate the loss of jobs at the Paducah and Portsmouth facilities, I have drafted an amendment to ensure that dollars currently earmarked for the cleanup of USEC generated uranium tails, which is an extremely toxic material, remain dedicated to cleaning up the Paducah and Portsmouth plants.

Mr. President, today USEC has accrued approximately $400 million on its books for the purpose of cleaning up the uranium waste generated by the uranium enrichment process. It is my understanding, however, that this money only remains available until USEC is privatized. At that point, the funds will be transferred to the General Fund of the Treasury. I believe it would be a huge mistake if we allowed these funds to be dumped into the General Fund, while we have a tremendous need for this cleanup, and funds specifically dedicated for this cleanup. Ensuring that these funds will be spent to dispose of USEC's uranium waste at both of the Gaseous Diffusion plants, will also help to mitigate job losses

which occur as a result of privatization.

Although I will not offer my amendment today, I would like to discuss it with Senator DOMENICI.

Mr. Chairman, isn't it true that since its inception in 1993, the USEC has created over 9,300 canisters of depleted uranium hexaflouride, with over 6,000 located at Paducah? Also, hasn't USEC carried over $400 million on its balance sheet for the clean up of this waste stream?

Mr. DOMENICI. The Senator is correct, USEC does maintain a fund specifically earmarked for the cleanup of this material.

Mr. MCCONNELL. I would ask the Chairman of the Energy and Water Subcommittee what will happen to both the cleanup liability and the funds, upon the privatization of USEC. Won't the Department of Energy (DOE) accept full responsibility for the cleanup for this environmental liability, as provided under the 1996 USEC Privatization Act? Also, it is my understanding that the funds would be transferred to the General Fund, and no longer specifically dedicated to funding USEC's environmental cleanup? Is this accurate?

Mr. DOMENICI. The USEC privatization legislation sets a cut-off at the date of privatization. Environmental liabilities that occur after the date of privatization—when USEC is no longer government owned—are not the responsibility of the Federal government. Liabilities incurred prior to that date—when USEC is government owned—remain the responsibility of the government.

Mr. MCCONNELL. Mr. President, I, for one, would like to see that DOE use the funds, which were collected from USEC customers and currently earmarked for cleaning up the uranium, continue to be dedicated to cleanups.

Would the Chairman of the Energy and Water Subcommittee assist me in finding a solution to ensure that the money earmarked, for the purpose of cleaning up the uranium tails produced by USEC, will continue to be dedicated for these purposes and help to mitigate the job losses at these plants?

Mr. DOMENICI. I agree that we need to make cleanup a priority and seek to apply these funds toward cleanup—they were collected for that purpose and should be used for such. I will work with the Senator to achieve this end.

AMENDMENT NO. 2726

Mr. DOMENICI. I send to the desk an amendment on behalf of Mr. DORGAN and Mr. CONRAD and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for Mr. DORGAN and Mr. CONRAD, proposes an amendment numbered 2726.

Mr. DOMENICI. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 18, line 2 insert the following after the period:

'': *Provided further*, That the Secretary of the Interior shall waive the scheduled annual payments for fiscal years 1998 and 1999 under section 208 of Public Law 100–202 (101 Stat. 1329–118)''.

And on page 16, line 16 strike: ''$697,919,000'' and insert: ''$697,669,000''.

Mr. DOMENICI. Mr. President, we have no objection to the amendment.

Mr. REID. No objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2726) was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

Mr. REID. I move to lay it on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2727

Mr. DOMENICI. Mr. President, I send an amendment to the desk on behalf of Senator MURRAY and Senator GORTON, the occupant of the Chair.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for Mrs. MURRAY and Mr. GORTON, proposes amendment numbered 2727.

Mr. DOMENICI. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 21, line 19: strike ''$456,700,000, to remain available until expended.'' and insert ''424,600,000, to remain available until expended.''

ENERGY SUPPLY

On page 21, line 2 strike ''motor vehicles for replacement only, $699,836,000, to re-'' and insert ''motor vehicles for replacement only, 699,864,000, to re-''

Mr. DOMENICI. Mr. President, essentially this amendment moves the dollar amount for the flux reactor in your State and Senator MURRAY's State from one account to another. In the process, because of the outlays of one portion versus the other, the budget authority had to be reduced by $4 million. It has been adjusted accordingly, and we have no objection.

Mr. REID. There is no objection on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2727) was agreed to.

Mr. DOMENICI. I thank Senator MURRAY for her attention.

Mr. REID. I move to reconsider the vote.

Mr. DOMENICI. I move to lay it on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER), is absent because of illness.

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—98

Abraham	Faircloth	Lott
Akaka	Feinstein	Lugar
Allard	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Moynihan
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brownback	Hagel	Reed
Bryan	Harkin	Reid
Bumpers	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hollings	Rockefeller
Campbell	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Coats	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kempthorne	Smith (OR)
Coverdell	Kennedy	Snowe
Craig	Kerrey	Stevens
D'Amato	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	

NAYS—1

Feingold

NOT VOTING—1

Specter

The bill (S. 2138) as amended, was passed, as follows:

S. 2138

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1999, for energy and water development, and for other purposes, namely:

TITLE I

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood control, beach erosion, and related purposes.

GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to

river and harbor, flood control, shore protection, and related projects, restudy of authorized projects, miscellaneous investigations, and, when authorized by laws, surveys and detailed studies and plans and specifications of projects prior to construction, $165,390,000, to remain available until expended, of which funds are provided for the following projects in the amounts specified:

Rehoboth and Dewey Beaches, Delaware, $150,000;

Fort Pierce Shore Protection, Florida, $300,000;

Lido Key Beach, Florida, $300,000;

Paducah, Kentucky, $100,000; and

Lake Pontchartrain Basin Comprehensive Study, Louisiana, $500,000:

Provided, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use $700,000 of the funds appropriated in Public Law 102–377 for the Red River Waterway, Shreveport, Louisiana, to Daingerfield, Texas, project for the feasibility phase of the Red River Navigation, Southwest Arkansas, study: *Provided further*, That the Secretary of the Army may make available $500,000 for the Atlanta Watershed, Atlanta, Georgia project.

CONSTRUCTION, GENERAL

For the prosecution of river and harbor, flood control, shore protection, and related projects authorized by laws; and detailed studies, and plans and specifications, of projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such studies shall not constitute a commitment of the Government to construction), $1,248,068,000, to remain available until expended, of which such sums as are necessary for the Federal share of construction costs for facilities under the Dredge Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund, as authorized by Public Law 104–303; and of which such sums as are necessary pursuant to Public Law 99–662 shall be derived from the Inland Waterways Trust Fund, for one-half of the costs of construction and rehabilitation of inland waterways projects, including rehabilitation costs for the Lock and Dam 25, Mississippi River, Illinois and Missouri; Lock and Dam 14, Mississippi River, Iowa; Lock and Dam 24, Mississippi River, Illinois and Missouri; and Lock and Dam 3, Mississippi River, Minnesota, projects, and of which funds are provided for the following projects in the amounts specified:

Norco Bluffs, California, $4,000,000;

Panama City Beaches, Florida, $5,000,000;

Indianapolis Central Waterfront, Indiana, $4,000,000;

Harlan, Williamsburg, Pike County Middlesboro, Cumberland City/Harland County, and Martin County, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project in Kentucky, $28,500,000;

Lake Pontchartrain and Vicinity (Hurricane Protection), Louisiana, $10,000,000;

Lake Pontchartrain (Jefferson Parish) Stormwater Discharge, Louisiana, $6,000,000;

Jackson County, Mississippi, $4,500,000;

Pascagoula Harbor, Mississippi, $10,000,000;

Wallisville Lake, Texas, $8,000,000;

Virginia Beach, Virginia (Hurricane Protection), $20,000,000;

Upper Mingo County (including Mingo County Tributaries), Lower Mingo County (Kermit), Wayne County, Hatfield Bottom, and McDowell County, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project in West Virginia, $12,300,000; and the Grundy, Virginia element of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project, $1,000,000:

Provided, That the navigation project for Cook Inlet Navigation, Alaska, authorized by Section 101(b)(2) of Public Law 104–303 is modified to authorize the Secretary of the Army, acting through the Chief of Engineers to construct the project at a total cost of $12,600,000 with an estimated first Federal cost of $9,450,000 and an estimated first non-Federal cost of $3,150,000: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers is directed to use $5,000,000 provided herein to construct bluff stabilization measures at authorized locations for the Natchez Bluff, Mississippi at a total estimated cost of $26,065,000 with an estimated first Federal cost of $19,549,000 and an estimated first non-Federal cost of $6,516,000 and to award continuing contracts, which are not to be considered fully funded: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use funds previously appropriated for the LaFarge Lake, Kickapoo River, Wisconsin project to complete and transmit to the appropriate committees of Congress by January 15, 1999 a decision document on the advisability of undertaking activities authorized by Public Law 104–303: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, may use up to $8,000,000 of the funding appropriated herein to initiate construction of an emergency outlet from Devils Lake, North Dakota, to the Sheyenne River, and that this amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 901(b)(2)(D)(i)); except that funds shall not become available unless the Secretary of the Army determines that an emergency (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) exists with respect to the emergency need for the outlet and reports to Congress that the construction is technically sound, economically justified, and environmentally acceptable and in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided further*, That the economic justification for the emergency outlet shall be prepared in accordance with the principles and guidelines for economic evaluation as required by regulations and procedures of the Army Corps of Engineers for all flood control projects, and that the economic justification be fully described, including the analysis of the benefits and costs, in the project plan documents: *Provided further*, That the plans for the emergency outlet shall be reviewed and, to be effective, shall contain assurances provided by the Secretary of State, after consultation with the International Joint Commission, that the project will not violate the requirements or intent of the Treaty Between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada, signed at Washington January 11, 1909 (36 Stat. 2448; TS 548) (commonly known as the ''Boundary Waters Treaty of 1909''): *Provided further*, That the Secretary of the Army shall submit the final plans and other documents for the emergency outlet to Congress: *Provided further*, That no funds made available under this Act or any other Act for any fiscal year may be used by the Secretary of the Army to carry out the portion of the feasibility study of the Devils Lake Basin, North Dakota, authorized under the Energy and Water Development Appropriations Act, 1993 (Public Law 102–377), that addresses the needs of the area for stabilized lake levels through inlet controls, or to otherwise study any facility or carry out any activity that would permit the transfer of water from the Missouri River Basin into Devils Lake: *Provided further*, That the entire amount of $8,000,000 shall be available only to the extent an official budget request, that includes the designation of the entire amount of the request as an emergency requirement as defined by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers is directed to use $500,000 of funds appropriated herein to continue construction of the Joseph G. Minish Passaic River waterfront park and historic area, New Jersey project: *Provided further*, That of amounts made available by this Act for project modifications for improvement of the environment under section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), $500,000 may be made available for demonstration of sediment remediation technology under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note; 104 Stat. 4644): *Provided further*, That the Secretary of the Army may make available $100,000 for the Belle Isle Shoreline Erosion Protection, Michigan project; $100,000 for the Riverfront Towers to Renaissance Center Shoreline Protection, Michigan project; and $200,000 for the Great Lakes Basin, Sea Lamprey Control, section 206, Michigan project.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, ARKANSAS, ILLINOIS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, AND TENNESSEE

For expenses necessary for prosecuting work of flood control, and rescue work, repair, restoration, or maintenance of flood control projects threatened or destroyed by flood, as authorized by law (33 U.S.C. 702a, 702g–1), $313,234,000, to remain available until expended.

OPERATION AND MAINTENANCE, GENERAL

For expenses necessary for the preservation, operation, maintenance, and care of existing river and harbor, flood control, and related works, including such sums as may be necessary for the maintenance of harbor channels provided by a State, municipality or other public agency, outside of harbor lines, and serving essential needs of general commerce and navigation; surveys and charting of northern and northwestern lakes and connecting waters; clearing and straightening channels; and removal of obstructions to navigation, $1,667,572,000, to remain available until expended, of which $460,000 may be made available for the Omaha District to pay pending takings claims for flooding of property adjacent to the Missouri River caused by actions taken by the Army Corps of Engineers, of which $2,540,000 shall be available for the project on the Missouri River between Fort Peck Dam and Gavins Point in South Dakota and Montana, under section 9(f) of the Act entitled ''An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes'', approved December 22, 1944 (102 Stat. 4031), of which such sums as become available from the special account established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l), may be derived from that Fund for construction, operation, and maintenance of outdoor recreation facilities, and of which funds are provided for the following projects in the amounts specified:

Ponce DeLeon Inlet, Florida, $4,000,000;

Delaware River, Philadelphia to the Sea, Pea Patch Island, Delaware and New Jersey, $1,500,000; and

Yuquina Bay and Harbor, North Marina Breakwater, Oregon, $1,100,000:

Provided, That no funds, whether appropriated, contributed, or otherwise provided, shall be available to the United States Army Corps of Engineers for the purpose of acquiring land in Jasper County, South Carolina, in connection with the Savannah Harbor navigation project: *Provided further*, That notwithstanding section 103(c)(1) of Public Law 99–662, the Secretary of the Army is directed to use up to $100,000 of the funds appropriated herein for the Bluestone Lake, West Virginia, project to reimburse the Tri-Cities Power Authority the total amount provided by the Authority to the Department of the Army after fiscal year 1997 for the reevaluation study for the project.

REGULATORY PROGRAM

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $106,000,000, to remain available until expended, of which $250,000 may be made available to support the National Contaminated Sediment Task Force established by section 502 of the Water Resources Development Act of 1992 (33 U.S.C. 1271 note; Public Law 102–580).

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to clean up contaminated sites throughout the United States where work was performed as part of the Nation's early atomic energy program, $140,000,000, to remain available until expended: *Provided*, That the remedial actions by the U.S. Army Corps of Engineers under this program shall consist of the following functions and activities to be performed at eligible sites where remediation has not been completed: sampling and assessment of contaminated areas, characterization of site conditions, determination of the nature and extent of contamination, preparation of designation reports, cleanup and closeout of sites, and any other functions determined by the Chief of Engineers as necessary of remediation: *Provided further*, That remedial actions by the U.S. Army Corps of Engineers under this program shall be subject to the administrative, procedural, and regulatory provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R., Chapter 1, Part 300: *Provided further*, That, except as stated herein, these provisions do not alter, curtail or limit the authorities, function or responsibilities of other agencies under the Atomic Energy Act, 42 U.S.C. 2011 et seq.: *Provided further*, That the unexpended balances of prior appropriations provided for these activities in this Act or any previous Energy and Water Development Appropriations Act may be transferred to and merged with this appropriation account, and thereafter, may be accounted for as one fund for the same time period as originally enacted.

GENERAL EXPENSES

For expenses necessary for general administration and related functions in the Office of the Chief of Engineers and offices of the Division Engineers; activities of the Coastal Engineering Research Board, the Humphreys Engineer Center Support Activity, the Water Resources Support Center, and the USACE Finance Center; and for costs of implementing the Secretary of the Army's plan to reduce the number of division offices as directed in title I, Public Law 104–206, $148,000,000, to remain available until expended: *Provided*, That no part of any other appropriation provided in title I of this Act shall be available to fund the activities of the Office of the Chief of Engineers or the executive direction and management activities of the division offices.

REVOLVING FUND

Amounts in the Revolving Fund may be used to construct a 17,000 square foot addition to the United States Army Corps of Engineers Alaska District main office building on Elemendorf Air Force Base. The Revolving Fund shall be reimbursed for such funding from appropriations of the benefitting programs by collection each year of user fees sufficient to repay the capitalized cost of the asset and to operate and maintain the asset. Using amounts available in the Revolving Fund, the Secretary of the Army is authorized to renovate office space in the General Accounting Office headquarters building in Washington, DC, for use by the Corps and GAO. The Secretary is authorized to enter into a lease with GAO to occupy such renovated space as appropriate, for the Corps' headquarters. The Secretary shall ensure that the Revolving Fund is appropriately reimbursed from appropriations of the Corps' benefitting programs by collection each year of amounts sufficient to repay the capitalized cost of such renovation and through rent reductions or rebates from GAO.

ADMINISTRATIVE PROVISION

Appropriations in this title shall be available for official reception and representation expenses (not to exceed $5,000); and during the current fiscal year the Revolving Fund, Corps of Engineers, shall be available for purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles.

GENERAL PROVISIONS

CORPS OF ENGINEERS—CIVIL

SEC. 101. Notwithstanding any other provisions of law, no fully allocated funding policy shall be applied to projects for which funds are identified in the Committee reports accompanying the Act or a subsequent Energy and Water Development Appropriations Act under the Construction, General; Operation and Maintenance, General; and Flood Control, Mississippi River and Tributaries, appropriation accounts: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake these projects using continuing contracts, as authorized in section 10 of the Rivers and Harbors Act of September 22, 1922 (33 U.S.C. 621).

SEC. 102. In fiscal year 1999, the Secretary of the Army is authorized and directed to provide planning, design and construction assistance to non-Federal interests in carrying out water-related environmental infrastructure and environmental resources development projects in Alaska, including assistance for wastewater treatment and related facilities; water supply, storage, treatment and distribution facilities; development, restoration or improvement of wetlands and other aquatic areas for the purpose of protection or development of surface water resources; and bulk fuel storage, rural power, erosion control, and comprehensive utility planning: *Provided*, That the non-Federal interest shall enter into a binding agreement with the Secretary wherein the non-Federal interest will provide all lands, easements, rights-of-way, relocations, and dredge material disposal areas required for the project, and pay 50 per centum of the costs of required feasibility studies, 25 per centum of the costs of designing and constructing the project, and 100 per centum of the costs of operation, maintenance, repair, replacement or rehabilitation of the project: *Provided further*, That the value of lands, easements, rights-of-way, relocations and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share, not to exceed 25 per centum, of the costs of designing and constructing the project: *Provided further*, That utilizing $5,000,000 of the funds appropriated herein, the Secretary is directed to carry out this section.

SEC. 103. None of the funds made available in this Act may be used to revise the Missouri River Master Water Control Manual when it is made known to the Federal entity or official to which the funds are made available that such revision provides for an increase in the springtime water release program during the spring heavy rainfall and snow melt period in States that have rivers draining into the Missouri River below the Gavins Point Dam.

TITLE II

DEPARTMENT OF THE INTERIOR

CENTRAL UTAH PROJECT

CENTRAL UTAH PROJECT COMPLETION ACCOUNT

For carrying out activities authorized by the Central Utah Project Completion Act, and for activities related to the Uintah and Upalco Units authorized by 43 U.S.C. 620, $43,665,000, to remain available until expended, of which $15,476,000 shall be deposited into the Utah Reclamation Mitigation and Conservation Account: *Provided*, That of the amounts deposited into that account, $5,000,000 shall be considered the Federal contribution authorized by paragraph 402(b)(2) of the Central Utah Project Completion Act and $10,476,000 shall be available to the Utah Reclamation Mitigation and Conservation Commission to carry out activities authorized under that Act.

In addition, for necessary expenses incurred in carrying out related responsibilities of the Secretary of the Interior, $1,283,000, to remain available until expended.

BUREAU OF RECLAMATION

For carrying out the functions of the Bureau of Reclamation as provided in the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and other Acts applicable to that Bureau as follows:

WATER AND RELATED RESOURCES

(INCLUDING TRANSFER OF FUNDS)

For management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, Indian Tribes, and others, $697,669,000, to remain available until expended, of which $1,873,000 shall be available for transfer to the Upper Colorado River Basin Fund and $46,218,000 shall be available for transfer to the Lower Colorado River Basin Development Fund, and of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund: *Provided*, That such transfers may be increased or decreased within the overall appropriation under this heading: *Provided further*, That of the total appropriated, the amount for program activities that can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 460l–6a(i) shall be derived from that Fund or account: *Provided further*, That funds contributed under 43 U.S.C. 395 are available until expended for the purposes for which contributed: *Provided further*, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: *Provided further*, That of the total appropriated, $25,800,000 shall be derived by transfer of unexpended balances from the Bureau of Reclamation Working

Capital Fund: *Provided further*, That funds available for expenditure for the Departmental Irrigation Drainage Program may be expended by the Bureau of Reclamation for site remediation on a non-reimbursable basis: *Provided further*, That the amount authorized for Indian municipal, rural, and industrial water features by section 10 of Public Law 89–108, as amended by section 8 of Public Law 99–294 and section 1701(b) of Public Law 102–575, is increased by $2,000,000 (October 1997 prices): *Provided further*, That the Secretary of the Interior is directed to use not to exceed $3,600,000 of funds appropriated herein as the Bureau of Reclamation share for completion of the McCall Area Wastewater Reclamation and Reuse, Idaho, project authorized in Public Law 105–62 and described in PN–FONSI–96–05: *Provided further*, That the Secretary of the Interior is directed to use not to exceed $200,000 of funds appropriated herein to provide technical assistance in a study of measures to increase the efficiency of existing water systems developed to serve sugar cane plantations and surrounding communities in the State of Hawaii: *Provided further*, That the Secretary of the Interior shall waive the scheduled annual payments for fiscal years 1998 and 1999 under section 208 of Public Law 100–202 (101 Stat. 1329–118).

BUREAU OF RECLAMATION LOAN PROGRAM ACCOUNT

For the cost of direct loans and/or grants, $12,000,000, to remain available until expended, as authorized by the Small Reclamation Projects Act of August 6, 1956, as amended (43 U.S.C. 422a–422l): *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $38,000,000.

In addition, for administrative expenses necessary to carry out the program for direct loans and/or grants, $425,000, to remain available until expended: *Provided*, That of the total sums appropriated, the amount of program activities that can be financed by the Reclamation Fund shall be derived from that Fund.

CENTRAL VALLEY PROJECT RESTORATION FUND

For carrying out the programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, $39,500,000 to be derived from such sums as may be collected in the Central Valley Project Restoration Fund pursuant to sections 3407(d), 3404(c)(3), 3405(f), and 3406(c)(1) of Public Law 102–575, to remain available until expended: *Provided*, That the Bureau of Reclamation is directed to assess and collect the full amount of the additional mitigation and restoration payments authorized by section 3407(d) of Public Law 102–575.

CALIFORNIA BAY-DELTA ECOSYSTEM RESTORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Department of the Interior and other participating Federal agencies in carrying out the California Bay-Delta Environmental Enhancement and Water Security Act consistent with plans to be approved by the Secretary of the Interior, in consultation with such Federal agencies, $65,000,000, to remain available until expended, of which such amounts as may be necessary to conform with such plans shall be transferred to appropriate accounts of such Federal agencies: *Provided*, That such funds may be obligated only as non-Federal sources provide their share in accordance with the cost-sharing agreement required under section 102(d) of such Act: *Provided further*, That such funds may be obligated prior to the completion of a final programmatic environmental impact statement only if: (1) consistent with 40 CFR 1506.1(c); and (2) used for purposes that the Secretary finds are of sufficiently high priority to warrant such an expenditure.

POLICY AND ADMINISTRATION

For necessary expenses of policy, administration, and related functions in the office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, to remain available until expended, $48,000,000, to be derived from the Reclamation Fund and be nonreimbursable as provided in 43 U.S.C. 377: *Provided*, That no part of any other appropriation in this Act shall be available for activities or functions budgeted as policy and administration expenses.

ADMINISTRATIVE PROVISION

Appropriations for the Bureau of Reclamation shall be available for purchase of not to exceed six passenger motor vehicles for replacement only.

TITLE III

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY SUPPLY

For expenses of the Department of Energy activities including the purchase, construction and acquisition of plant and capital equipment and other expenses necessary for energy supply, uranium supply and enrichment activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; and the purchase of 22 passenger motor vehicles for replacement only, $786,854,000, to remain available until October 1, 2000, of which not less than $3,860,000 shall be available for solar building technology research, not less than $72,966,000 shall be available for photovoltaic energy systems, not less than $21,617,500 shall be available for solar thermal energy systems (of which not less than $3,000,000 shall be available for the dish/engine field verification initiative), not less than $35,750,000 shall be available for power systems in biomass/biofuels energy systems, not less than $41,083,500 shall be available for transportation in biomass/biofuels energy systems (of which not less than $3,000,000 shall be available to fund the Consortium for Plant Biotechnology Research), not less than $38,265,000 shall be available for wind energy systems, not less than $4,000,000 shall be available for the renewable energy production incentive program, not less than $7,000,000 shall be available for solar program support, not less than $5,087,500 shall be available for the international solar energy program, not less than $680,000 shall be available for solar technology transfer, not less than $5,000,000 shall be available for the National Renewable Energy Laboratory, not less than $31,250,000 shall be available for geothermal technology development, not less than $5,000,000 shall be available for the Federal building/Remote power initiative, not less than $16,325,500 shall be available for program direction, not to exceed $25,000 may be used for official reception and representation expenses for transparency activities and of which not to exceed $1,500,000 may be used to pay a portion of the expenses necessary to meet the United States' annual obligations of membership in the Nuclear Energy Agency.

NON-DEFENSE ENVIRONMENTAL MANAGEMENT

For Department of Energy expenses, including the purchase, construction and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental management activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction or expansion, $424,600,000, to remain available until expended.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions and other activities of title II of the Atomic Energy Act of 1954 and title X, subtitle A of the Energy Policy Act of 1992, $200,000,000, to be derived from the Fund, to remain available until expended: *Provided*, That $30,000,000 of amounts derived from the Fund for such expenses shall be available in accordance with title X, subtitle A, of the Energy Policy Act of 1992.

SCIENCE

For expenses of the Department of Energy activities including the purchase, construction and acquisition of plant and capital equipment and other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of 15 passenger motor vehicles for replacement only, $2,676,560,000, to remain available until expended: *Provided*, That $7,600,000 of the unobligated balances originally available for Superconducting Super Collider termination activities shall be made available for other activities under this heading: *Provided further*, That $500,000 of the unobligated balances may be applied to the identification of trace element isotopes in environmental samples at the University of Nevada Las Vegas.

NUCLEAR WASTE DISPOSAL FUND

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $190,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund; of which not to exceed $4,875,000 may be provided to the State of Nevada solely to conduct scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982; and of which not to exceed $5,540,000 may be provided to affected local governments, as defined in Public Law 97–425, to conduct appropriate activities pursuant to the Act: *Provided*, That the distribution of the funds to the units of local government shall be determined by the Department of Energy: *Provided further*, That the funds shall be made available to the units of local government by direct payment: *Provided further*, That within ninety days of the completion of each Federal fiscal year, each local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97–425. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act.

DEPARTMENTAL ADMINISTRATION

For salaries and expenses of the Department of Energy necessary for departmental administration in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the hire of passenger motor vehicles and official reception and representation expenses (not to exceed $35,000), $238,539,000, to remain available until expended: *Provided*, That moneys received by the Department for miscellaneous revenues estimated to total $136,530,000 in fiscal year 1999 may be retained and used for operating expenses within this account, and may remain available until expended, as authorized by section 201 of Public Law 95–238, notwithstanding the provisions of 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during fiscal year 1999 so as to result in a final fiscal year 1999 appropriation from the General Fund estimated at not more than $102,009,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $27,500,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

WEAPONS ACTIVITIES

For Department of Energy expenses, including the purchase, construction and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; the purchase of one fixed wing aircraft; and the purchase of passenger motor vehicles (not to exceed 32 for replacement only, and one bus), $4,445,700,000, to remain available until expended: *Provided*, That funding for any ballistic missile defense program undertaken by the Department of Energy for the Department of Defense shall be provided by the Department of Defense according to procedures established for Work for Others by the Department of Energy.

DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

For Department of Energy expenses, including the purchase, construction and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense environmental restoration and waste management activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; and the purchase of passenger motor vehicles (not to exceed 3 new sedans and 6 for replacement only, of which 3 are sedans, 2 are buses, and one is an ambulance), $4,293,403,000, to remain available until expended.

DEFENSE FACILITIES CLOSURE PROJECTS

For expenses of the Department of Energy to accelerate the closure of defense environmental management sites, including the purchase, construction and acquisition of plant and capital equipment and other necessary expenses, $1,048,240,000, to remain available until expended.

DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION

For Department of Energy expenses for privatization projects necessary for atomic energy defense environmental restoration and waste management activities authorized by the Department of Energy Organization Act (42 U.S.C. 7101, et seq.), $241,857,000, to remain available until expended.

OTHER DEFENSE ACTIVITIES

For Department of Energy expenses, including the purchase, construction and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense, other defense activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101, et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $1,658,160,000, to remain available until expended: *Provided*, That of the amount appropriated herein $5,000,000 shall be available for the joint U.S.-Russian development of a passively safe advanced reactor technology to dispose of Russian excess weapons derived plutonium: *Provided further*, That $56,700,000 appropriated herein is to procure plutonium disposition services and to begin Title I design for a mixed-oxide fuel fabrication facility: *Provided further*, That such funds shall not be available except as necessary to implement a bilateral program with the Russian Federation to convert to non-weapons forms and dispose of excess weapons plutonium in accordance with which the United States will at no time convert to non-weapons forms quantities of excess weapons plutonium greater than those converted to non-weapons forms by the Russian Federation: *Provided further*, That of the amount appropriated herein $30,000,000 is to be available for the Initiatives for Proliferation Prevention program: *Provided further*, That of the amount appropriated herein $30,000,000 shall be available for the purpose of implementing the ''nuclear cities'' initiative pursuant to the discussions of March 1998 between the Vice President of the United States and the Prime Minister of the Russian Federation and between the United States Secretary of Energy and the Minister of Atomic Energy of the Russian Federation.

DEFENSE NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $185,000,000, to remain available until expended.

POWER MARKETING ADMINISTRATIONS

OPERATION AND MAINTENANCE, ALASKA POWER ADMINISTRATION

For capital assets acquisition, $5,000,000, to remain available until expended.

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are approved for official reception and representation expenses in an amount not to exceed $3,000.

During fiscal year 1999, no new direct loan obligations may be made.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy pursuant to the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, $8,500,000, to remain available until expended; in addition, notwithstanding 31 U.S.C. 3302, not to exceed $28,000,000 in reimbursements of which $20,000,000 is for transmission wheeling and ancillary services and $8,000,000 is for power purchases at the Richard B. Russell Project, to remain available until expended.

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, and for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses, including official reception and representation expenses in an amount not to exceed $1,500 in carrying out the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southwestern power area, $26,000,000, to remain available until expended; in addition, notwithstanding the provisions of 31 U.S.C. 3302, not to exceed $4,200,000 in reimbursements, to remain available until expended.

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

(INCLUDING TRANSFER OF FUNDS)

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed $1,500, $215,435,000, to remain available until expended, of which $206,222,000 shall be derived from the Department of the Interior Reclamation Fund: *Provided*, That of the amount herein appropriated, $5,036,000 is for deposit into the Utah Reclamation Mitigation and Conservation Account pursuant to title IV of the Reclamation Projects Authorization and Adjustment Act of 1992.

FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, $1,010,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 423 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

FEDERAL ENERGY REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses (not to exceed $3,000), $168,898,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, not to exceed $168,898,000 of revenues from fees and annual charges, and other services and collections in fiscal year 1999 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the General Fund shall be reduced as revenues are received during fiscal year 1999 so as to result in a final fiscal year 1999 appropriation from the General Fund estimated at not more than $0.

GENERAL PROVISIONS

DEPARTMENT OF ENERGY

SEC. 301. (a) None of the funds appropriated by this Act or any prior appropriations Act may be used to award a management and operating contract unless such contract is awarded using competitive procedures or the Secretary of Energy grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver.

(b) At least 60 days before a contract award, amendment, or modification for

which the Secretary intends to grant such a waiver, the Secretary shall submit to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate a report notifying the subcommittees of the waiver and setting forth the reasons for the waiver.

SEC. 302. (a) None of the funds appropriated by this Act or any prior appropriations Act may be used to award, amend, or modify a contract in a manner that deviates from the Federal Acquisition Regulation, unless the Secretary of Energy grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver.

(b) At least 60 days before a contract award, amendment, or modification for which the Secretary intends to grant such a waiver, the Secretary shall submit to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate a report notifying the subcommittees of the waiver and setting forth the reasons for the waiver.

SEC. 303. None of the funds appropriated by this Act or any prior appropriations Act may be used to—

(1) develop or implement a workforce restructuring plan that covers employees of the Department of Energy; or

(2) provide enhanced severance payments or other benefits for employees of the Department of Energy;

under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2644; 42 U.S.C. 7274h).

SEC. 304. None of the funds appropriated by this Act or any prior appropriations Act may be used to augment the $40,000,000 made available for obligation by this Act for severance payments and other benefits and community assistance grants under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2644; 42 U.S.C. 7274h).

SEC. 305. None of the funds appropriated by this Act or any prior appropriations Act may be used to prepare or initiate Requests For Proposals (RFPs) for a program if the program has not been funded by Congress.

SEC. 306. None of the funds appropriated by this Act or any prior appropriations Act may be used to decrease the concentration of radioactive contamination in waste so that such waste complies with the waste acceptance criteria for the Waste Isolation Pilot Plant.

SEC. 307. CHANGE OF NAME OF THE OFFICE OF ENERGY RESEARCH. (a) IN GENERAL.—Section 209 of the Department of Energy Organization Act (42 U.S.C. 7139) is amended—

(1) in the section heading, by striking ''ENERGY RESEARCH'' and inserting ''SCIENCE RESEARCH''; and

(2) in subsection (a), by striking ''Energy Research'' and inserting ''Science Research''.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—The table of contents in the first section of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended by striking the item relating to section 209 and inserting the following:

''Section 209. Office of Science Research.''.

(2) REFERENCES IN OTHER LAW.—Each of the following is amended by striking ''Energy Research'' and inserting ''Science Research'':

(A) The item relating to the Director, Office of Energy Research, Department of Energy in section 5315 of title 5, United States Code.

(B) Section 2902(b)(6) of title 10, United States Code.

(C) Section 406(h)(2)(A)(v) of the Public Health Service Act (42 U.S.C. 284a(h)(2)(A)(v)).

(D) Sections 3167(3) and 3168 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381d(3), 7381e).

(E) Paragraphs (1) and (2) of section 224(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10204(b)).

(F) Section 2203(b)(3)(A)(i) of the Energy Policy Act of 1992 (42 U.S.C. 13503(b)(3)(A)(i)).

SEC. 308. MAINTENANCE OF SECURITY AT DOE URANIUM ENRICHMENT PLANTS.—Section 3107(h) of the USEC Privatization Act (42 U.S.C. 2297h–5(h)) is amended in paragraph (1), by striking ''an adequate number of'' and inserting ''all''; and by inserting the following paragraph:

''(2) FUNDING.—The Secretary of Energy shall reimburse a contractor or subcontractor for the costs of providing security to a gaseous diffusion plant as required to comply with the guidelines referred to in paragraph (1).''.

SEC. 309. In order to facilitate administrative operations and promote sales of Federal power, upon request of a joint operating entity, the Administrator of the Bonneville Power Administration shall sell, pursuant to section 5(b)(1) of Public Law 96–501, as amended, 94 Stat. 2697, 16 U.S.C. 839c, at wholesale to such joint operating entity electric power for the purpose of meeting the firm power loads of regional public bodies and cooperatives that are members or participants of the joint operating entity: *Provided*, That the term ''joint operating entity'' means an entity that is lawfully organized under state law as a public body or cooperative by, and whose members or participants include only, two or more public bodies or cooperatives which are customers of the Administrator.

(TRANSFERS OF UNEXPENDED BALANCES)

SEC. 310. The unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 311. OFFSETTING REDUCTIONS. Each amount made available under the headings ''NON-DEFENSE ENVIRONMENTAL MANAGEMENT'', ''URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND'', ''SCIENCE'', and ''DEPARTMENTAL ADMINISTRATION'' under the heading ''ENERGY PROGRAMS'' and ''CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION (INCLUDING TRANSFER OF FUNDS)'' under the heading ''POWER MARKETING ADMINISTRATIONS'' is reduced by 1.586516988447 percent.

TITLE IV

INDEPENDENT AGENCIES

APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, notwithstanding section 405 of said Act, and for necessary expenses for the Federal Co-Chairman and the alternate on the Appalachian Regional Commission and for payment of the Federal share of the administrative expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, $67,000,000, to remain available until expended.

DENALI COMMISSION

For expenses of the Denali Commission including the purchase, construction and acquisition of plant and capital equipment as necessary and other expenses as authorized pursuant to this Act, $20,000,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100–456, section 1441, $17,500,000, to remain available until expended.

NUCLEAR REGULATORY COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by 5 U.S.C. 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $466,000,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $17,000,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to State governments, foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act may be retained and used for salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $416,000,000 in fiscal year 1999 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That of the amount appropriated herein, $33,000,000 shall be available only for agreement State oversight, international activities, the generic decommissioning management program, regulatory support to agreement States, the small entity program, the nonprofit educational program, and other Federal agency programs, and shall be excluded from license fee revenues, notwithstanding 42 U.S.C. 2214: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1999 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to State governments, foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1999 appropriation estimated at not more than $50,000,000.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by 5 U.S.C. 3109, $4,800,000, to remain available until expended; and in addition, an amount

not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided*, That notice of such transfers shall be given to the Committees on Appropriations of the House of Representatives and Senate: *Provided further*, That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1999 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1999 appropriation estimated at not more than $0.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100–203, section 5051, $2,600,000, to be derived from the Nuclear Waste Fund, and to remain available until expended.

TENNESSEE VALLEY AUTHORITY

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. ch. 12A), including hire, maintenance, and operation of aircraft, and purchase and hire of passenger motor vehicles, $70,000,000, to remain available until expended.

TITLE V

GENERAL PROVISIONS

SEC. 501. None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in section 1913 of title 18, United States Code.

SEC. 502. (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

(c) PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ''Made in America'' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 503. None of the funds made available in this Act may be provided by contract or by grant (including a grant of funds to be available for student aid) to any institution of higher education, or subelement thereof, that is currently ineligible for contracts and grants pursuant to section 514 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997 (as contained in section 101(e) of division A of Public Law 104–208; 110 Stat. 3009–270).

SEC. 504. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with a contractor that is subject to the reporting requirement set forth in subsection (d) of section 4212 of title 38, United States Code, but has not submitted the most recent report required by such subsection.

SEC. 505. None of the funds made available in this Act to pay the salary of any officer or employee of the Department of the Interior may be used for the Animas-La Plata Project, in Colorado and New Mexico, except for: (1) activities required to comply with the applicable provisions of current law; and (2) continuation of activities pursuant to the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585).

SEC. 506. (a) None of the funds appropriated or otherwise made available by this Act may be used to determine the final point of discharge for the interceptor drain for the San Luis Unit until development by the Secretary of the Interior and the State of California of a plan, which shall conform to the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters.

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the ''Cleanup Program—Alternative Repayment Plan'' and the ''SJVDP—Alternative Repayment Plan'' described in the report entitled ''Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995'', prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal Reclamation law.

SEC. 507. Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking ''September 30, 1998'' and inserting ''September 30, 1999''.

SEC. 508. None of the funds made available in this or any other Act may be used to restart the High Flux Beam Reactor.

TITLE VI

DENALI COMMISSION

SEC. 601. SHORT TITLE. This title may be cited as the ''Denali Commission Act of 1998''.

SEC. 602. FINDINGS. The Congress finds that—

(1) vast regions of the State of Alaska, while abundant in natural resources and rich in potential, trail the rest of the Nation in economic growth;

(2) roughly two-thirds of the land and associated natural resources within Alaska are owned by the Federal Government;

(3) many Alaska communities do not have access to potable water which often results in disease, and in some cases death;

(4) the primary means of sewage disposal in some Alaska communities continues to open sewage lagoons, which can result in outbreaks of hepatitis, meningitis, particularly among young children;

(5) power costs are as much as ten times higher in some areas of Alaska than in the lower 48 states, which thwarts economic development;

(6) bulk fuel storage tanks built by the Federal Government in many Alaska communities do not comply with the Oil Pollution Act of 1990, could, therefore, be required to be closed, are used to store heating oil critical to survival, and that Alaska communities presently have no way to upgrade or replace the tanks;

(7) the majority of Alaska communities have essential infrastructure needs which presently cannot be met;

(8) the lack of infrastructure and economic opportunities in Alaska communities has resulted in disproportionately high Federal costs for welfare assistance, unemployment assistance, food stamps, heating oil, and other Federal programs in Alaska; and

(9) by addressing infrastructure needs and promoting economic development, the reliance of Alaska communities on Federal assistance and the cost to the Federal Government of such assistance could be significantly reduced.

SEC. 603. PURPOSE. It is the purpose of this Act to assist Alaska in addressing its special problems, to develop its infrastructure and utilities, to promote its economic development in rural communities by utilizing the markets, technical support, and other resources of urban areas, and to establish a framework for joint Federal and State efforts toward providing basic facilities essential to its growth and attacking its common problems.

SEC. 604. DENALI COMMISSION. (a) ESTABLISHMENT.—There is hereby established the Denali Commission which shall be composed of one Federal member appointed by the President with the advice and consent of the Senate, one State member appointed by the Governor after consultation with the Alaska Federation of Natives, the President of the University of Alaska or a designee, the President of the Alaska Chamber of Commerce, and the Executive Director of the Alaska Municipal League. The Federal member shall be compensated by the Federal government at level III of the Executive Schedule of subchapter II of chapter 53 of title V, United States Code.

(b) CHAIRMAN; DECISIONS.—The Federal member shall be the Chairman of the Denali Commission. Decisions by the Denali Commission shall require the affirmative vote of the Chairman and at least two of the other members of the Commission. With respect to matters that come before the Commission, the Chairman may inform Federal departments and agencies having an interest in the subject matter as appropriate.

(c) FUNCTIONS.—The Denali Commission, in consultation with the Governor of Alaska, shall develop a statewide, comprehensive plan for economic and infrastructure development, establish priorities, approve project and grant proposals, and administer funds appropriated to the Commission. It shall solicit project proposals to modernize infrastructure from local governments and other organizations. The Commission is authorized to adopt rules and regulations governing its conduct, appoint and fix compensation of staff to assist the Commission, accept and use gifts or donations, and enter into and perform contracts, leases, or cooperative agreements. Administrative expenses of the Commission shall be paid by the Federal Government and may not exceed 5 percent of any funds appropriated under this Act. The Commission and its grantees shall maintain accurate and complete records which shall be available for audit and examination by the Comptroller General or his designee. The Commission shall submit an annual report six months after the conclusion of the fiscal year which shall be submitted to the President, the Chairmen of the House and Senate

Appropriations Committees, and the Governor of Alaska.

(d) SPECIAL FUNCTIONS.—

(1) RURAL UTILITIES.—In carrying out its other functions, the Denali Commission should provide assistance as appropriate and seek to avoid duplication and to complement the water and wastewater programs under section 306D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926d) and under section 303 of the Safe Drinking Water Act Amendments of 1996 (33 U.S.C. 1263a).

(2) BULK FUEL TANKS.—The Denali Commission, in consultation with the Commandant of the United States Coast Guard, shall develop a program to provide for the repair or replacement of bulk fuel storage tanks in Alaska which are not in compliance with Federal law, including the Oil Pollution Act of 1990, or State law.

SEC. 605. INSPECTOR GENERAL. Section 8G of the Inspector General Act of 1978, as amended (5 U.S.C. appendix 3 section 8G) is amended in subsection (a)(2) thereof by adding after ''the Corporation for Public Broadcasting'', ''the Denali Commission,''.

SEC. 606. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Denali Commission to carry out this Act and for necessary expenses including staff, $20,000,000 in fiscal year 1999 and such sums as may be necessary for each of fiscal years 2000 through 2003.

This Act may be cited as the ''Energy and Water Development Appropriations Act, 1999''.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2727, AS MODIFIED

Mr. DOMENICI. Mr. President, I ask unanimous consent that amendment No. 2727 previously agreed to be modified with the changes now at the desk. We made an error in where we put a number and we are just correcting it to what it ought to be.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No objection.

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

The amendment (No. 2727), as modified, is as follows:

On page 21, line 19: strike ''$456,700,000, to remain available until expended.'' and insert ''$424,600,000, to remain available until expended.

ENERGY SUPPLY

On page 21, line 2 strike ''motor vehicles for replacement only, $699,836,000, to re-'' and insert ''motor vehicles for replacement only, $727,836,000, to re-''.

Mr. DOMENICI. Mr. President, I ask unanimous consent that when the Senate receives from the House of Representatives the companion bill to S. 2138, the Senate immediately proceed to its consideration; that all after the enacting clause be stricken; that the text of S. 2138 as passed be inserted in lieu thereof; that the House bill, as amended, be read for a third time and passed; that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses thereon, and the Chair be authorized to appoint the following conferees on the part of the Senate: Senators DOMENICI, COCHRAN, GORTON, MCCONNELL, BENNETT, BURNS, CRAIG, STEVENS, REID, BYRD, HOLLINGS, MURRAY, KOHL, DORGAN, and INOUYE; and that the foregoing occur without any intervening action or debate.

I further ask unanimous consent that the bill, S. 2138, not be engrossed and it remain at the desk pending receipt of the House-passed companion bill; that upon passage of the House companion bill by the Senate, the passage of S. 2138 be vitiated, and the bill be indefinitely postponed.

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

Mr. DOMENICI. I thank the Chair.

Mr. REID. Mr. President, I want to take just a minute to express my appreciation for the work of the chairman of the subcommittee. We have worked hard to get the bill passed. It is now passed.

I also have expressed on the record on a number of occasions what a pleasant arrangement the senior Senator from New Mexico and I have on this legislation. I reiterate that. I also want to express my appreciation for the hard work done by Senator DOMENICI's staff, Alex Flint, the majority clerk, David Gwaltney, who handled the water project, which is very large and significant in this bill. They are very professional and work very hard. The taxpayers get more than their money's worth from these gentlemen.

I also express publicly my appreciation for Greg Daines, minority clerk, who worked very hard on this legislation for months, getting it to the point where we now are. I have a very important congressional fellow who has worked with me on this legislation and others, Bob Perret, who has done an outstanding job.

Also, I want to express my appreciation to Lashawnda Leftwich, who is the staff assistant to Mr. Flint, the majority clerk in this matter, and also Liz Blevins, the staff assistant to the minority clerk. We have, I think, a good team, a good group of people here who have worked very hard together. Again, I express my appreciation to the chairman of the subcommittee.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. This is a good bill we passed. It has a lot of interesting and needed policy decisions, projects and programs. We will have a very difficult conference with the House because they have some noticeably different priorities, especially when it comes to spending more money on water projects than we were able to spend. There will be less on research on DOE's nondefense research projects. But, overall, I am most particularly pleased with the nuclear part of this bill, for nuclear research, which we have five or six more new nuclear research projects, three that the President asked for, three that we asked for.

You know, the United States is very much behind the world on matters of nuclear power and nuclear science and nuclear engineering. Frankly, the world is moving in that direction. We were the beginners. We were the ones who started it. We were heralded as the world's most knowledgeable and efficient, and we are going to play some catchup, but catch up we will do, in the next decade, because nuclear power and nuclear energy will come back in the world. Whether America makes policy decisions sufficiently to give it a chance or not, only time will tell. But some decisions of the past 20 years, with reference to nuclear activities, have been about as inconsistent with what is happening in the world as anything anyone could imagine, based on wrong premises, expecting action in the world that never occurred.

Those things are going to have to be debated. A few of them start to move here. But, over the long run, there will be very significant debate about what happens to nuclear power and nuclear activities in the United States.

Right alongside that, while all that is going on that I have described, be it negative or however one would categorize it, clearly the Science-Based Stockpile Stewardship, which we are using in lieu of any further underground testing to protect our nuclear arsenal and make sure it is safe and trustworthy, is generating some of the most exciting new physics and science of anything going on in the world. Indeed, our great scientists and engineers are producing instrumentation, computerization, and new methods of looking inside of nuclear bombs to see what is really going on so we can replace the right parts, since we do not make any new ones. This is all very exciting and is adding a great dimension of science activity while a very valuable thing is being done for our country. Expensive it may be, but the right thing, without question, it is.

With that, more will be said during the year on those issues. I thank, in conclusion, my ranking member, Senator REID. I believe between us we not only work well together but I think we have helped each other make this bill a better bill. For that, I am very grateful to the Senator from Nevada, and I thank him very much.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

AGRICULTURE RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now begin consideration of Calendar No. 409, S. 2159, the agriculture appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. ROBB. Mr. President, reserving the right to object, and I don't intend to object, but I just wanted my colleagues to be put on notice about my

concerns with this bill. I appreciate the work of my two Senate colleagues who developed this bill, and my concerns about this bill actually fall with what is not included in the bill, rather than what is in the bill.

Mr. President, we have a very serious problem at the USDA that no one seems to be very interested in solving. As some of you may know, there are a number of minority farmers who filed discrimination complaints with the USDA back in the 1980's and were told that the USDA was on the case. In fact, they weren't and didn't intend to be. After the statute of limitations passed for these farmers to file their discrimination complaints in a court of law, the USDA acknowledged that they never investigated or attempted to resolve these complaints. Since the statute of limitations has now passed for a number of these farmers, these farmers have been left with no remedy for the alleged acts of discrimination they suffered, all because of the inaction of the USDA. It seems to me we ought to address that matter at the earliest possible opportunity.

Mr. President, many here may also be aware of several provisions which took effect with the enactment of the 1996 Farm bill which have resulted in the denial of credit to farmers, based on a write-down of a previous loan. This has a particularly disproportionate effect on minority farmers, even though in a number of cases it was the USDA that encouraged the individuals to take a write-down. This body added language to the Emergency Supplemental earlier this year which addressed this problem. However, that language was taken out in a conference with the House. It would seem to me that the least we could do here is to add that language to this bill.

In sum, Mr. President, I do not object to proceeding with this bill, but I want to work with the Senator from Mississippi and the Senator from Arkansas to see if we can address these issues in this bill.

The PRESIDING OFFICER. Without objection, the unanimous consent request is agreed to.

The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2159) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for fiscal year ending September 30, 1999.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Mississippi.

PRIVILEGE OF THE FLOOR

Mr. COCHRAN. Mr. President, I ask unanimous consent that the following Appropriations Committee staff members and fellow and intern be granted floor privileges during the consideration of this bill, S. 2159, and during any votes that may occur in relation thereto: Rebecca Davies, Martha Scott Poindexter, Rachelle Graves, Cornelia Tietka and Haywood Hamilton.

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

Mr. COCHRAN. Mr. President, I am pleased to present for the Senate's consideration S. 2159, the Fiscal Year 1999 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations bill. This bill provides fiscal year 1999 funding for all programs and activities of the United States Department of Agriculture—with the exception of the Forest Service—the Food and Drug Administration, the Commodity Futures Trading Commission, and expenses and payments of the farm credit system.

As reported, the bill recommends total new budget authority for fiscal year 1999 of $56.8 billion. This is $7.0 billion more than the fiscal year 1998 enacted level, and $740 million less than the President's fiscal year 1999 budget request.

Changes in mandatory funding requirements account for the overall increase from the fiscal year 1998 enacted level, principally reflecting lower estimated Food Stamp and higher Child Nutrition program expenses, along with a $7.6 billion increase in the required payment to reimburse the Commodity Credit Corporation for net realized losses.

Including Congressional budget scorekeeping adjustments and prior-year spending actions, this bill recommends total discretionary spending of $13.715 billion in budget authority and $14.080 billion in outlays for fiscal year 1999. These amounts are consistent with the Subcommittee's discretionary spending allocations.

Let me take a few minutes first to summarize the bill's major funding recommendations.

For the Food Safety and Inspection Service, appropriations of $605 million are recommended, $16 million more than the fiscal year 1998 level. These additional funds are necessary to maintain the current inspection system and to continue to implement the Hazardous Analysis and Critical Control Point meat and poultry inspection system.

For farm credit programs, the bill funds an estimated $2.4 billion total loan program level, including $489 million for farm ownership loans and $1.8 billion for farm operating loans.

Total funding of $922 million is recommended for the Farm Service Agency, $11 million more than the 1998 level. Increased funding is provided to maintain non-Federal staff years at the level requested in the budget, preventing reductions beyond those already planned.

For agriculture research, education, and extension activities, the bill provides total appropriations of $1.7 billion. Included in this amount is a reduction from fiscal year 1998 of $35.2 million for Agricultural Research Service buildings and facilities, a $24 million increase for research activities of the ARS, and a $12 million increase in funding for the Cooperative State Research, Education, and Extension Service, which includes a 3-percent increase in base formula funds.

For USDA conservation programs, total funding of $792 million is provided, $5 million more than the 1998 level. This includes $638 million for conservation operations, $101 million for watershed and flood prevention operations, and $34 million for the resource conservation and development program.

USDA's Foreign Agriculture Service is funded at a level of $136 million. In addition, a total program level of $1.1 billion is recommended for the Public Law 480 program, including $221 million for Title I, $837 million for Title II, and $30 million for Title III of the program.

The bill also provides a total program level of $2.2 billion for rural economic and community development programs. Included in this amount is $700 million for the Rural Community Advancement Program, an increase of $48 million from the fiscal year 1998 level; and a total $1.5 billion program level for rural electric and telecommunications loans, $92 million more than the 1998 level.

The Committee has devoted adequate resources to those programs which provide affordable, safe, and decent housing for low-income individuals and families living in rural America.

Estimated rural housing loan authorizations funded by this bill total $4.3 billion, a $65 million increase from the fiscal year 1998 appropriations level. Included in this amount is $1.0 billion in section 502 low-income housing direct loans and $129 million in section 515 rental housing loans.

In addition, $583 million is recommended for the rental assistance program. This is the same as the budget request level and $42 million more than the 1998 appropriation.

Over 65 percent of the bill's total funding, $37 billion, is provided for USDA's domestic food assistance programs. This includes $9.2 billion for child nutrition programs; $3.9 billion for WIC, including $15 million for the farmers' market nutrition program; $141 million for commodity assistance; and $23.8 billion for the food stamp program.

For those independent agencies funded by the bill, the Committee provides total appropriations of $1.0 billion. Included in this amount is $61 million for the Commodity Futures Trading Commission, and $953 million for the Food and Drug Administration (FDA). Total appropriations recommended for the FDA are $27 million more than the 1998 level, reflecting the full increase requested in the budget for FDA rental payments and an additional $4 million more than the request level for buildings and facilities. In addition, the bill makes available $132 million in Prescription Drug User Fee Act collections, $15 million more than the fiscal year 1998 level.

I would like to point out to my colleagues that the discretionary spending

allocations for this bill are approximately $200 million in budget authority and outlays below a freeze at the 1998 levels. To provide the selected increases I just cited and to maintain funding for essential farm, housing, and rural development programs, several mandatory funding restrictions are included in the bill. Modest limitations are imposed on Food Stamp program commodity purchases and on acreage enrollments in the Wetlands Reserve Program, and restrictions are imposed on fiscal year 1999 funding for the Conservation Farm Option Program and the Fund for Rural America.

In the case of the Fund for Rural America, it was a choice between providing adequate appropriations for research and rural development—the increases in funding recommended for agriculture research and rural development, including $48 million for the Rural Community Advancement program and $24 million for ARS research—or allowing the Administration to decide how to spend funds for selected rural development and agriculture research purposes.

I also want to remind my colleagues that the President's budget for programs and activities under this Subcommittee's jurisdiction assumes new user fees will be enacted and generate a net total of over $650 million in collections to offset the discretionary spending increases proposed by the President. While relying on savings from new user fees and other legislative proposals may allow the President to claim discretionary spending levels which conform with those set forth in the bipartisan budget agreement, appropriations cannot be reduced until these legislative proposals are acted on by Congress and enacted into law.

However, that is not the case and this bill assumes none of the user fee savings proposed in the budget. Consequently, the savings assumed in the President's budget are not available to this Committee to offset the discretionary spending increases and new initiatives proposed by the Administration. Many of these proposals have merit and are ones I might support. However, this Committee must comply with the discretionary spending levels in the Bipartisan Budget Agreement and we have had to make some difficult decisions as a result. We have worked hard to maintain funding for the programs and activities funded by this bill as close to the 1998 program levels as possible, providing increases necessary to maintain essential personnel levels and to meet increased subsidy costs where necessary to sustain 1998 loan levels.

Also, despite recent reports, food safety continues to be a high priority of this Committee. The bill recommended to the Senate provides the funds necessary to ensure that American consumers continue to have the safest food in the world. This bill makes no reductions in appropriations for USDA and FDA food safety activities. In fact, the bill continues the enhanced levels provided last year for activities defined to be part of the Administration's food safety initiatives. This includes the additional $24 million for FDA food safety initiatives and $9 million for USDA food safety initiatives provided for fiscal year 1998. In addition, the bill includes $3.6 million of the increase requested in the fiscal year 1999 budget for USDA food safety initiatives. Not included in the President's food safety initiatives but equally important to the continued safety of our nation's food supply is based funding for the Food Safety and Inspection Service. This bill provides fiscal year 1999 appropriations of $605 million for the Food Safety and Inspection Service (FSIS), $455 million more than the Administration's requested level and $16 million more than the 1998 level. With the appropriations for FSIS inspection activities included, this bill recommends total appropriations of $806.3 million for FDA and USDA food safety activities for fiscal year 1999, as compared to the President's $380.6 million appropriations request. This does not include enhanced funding of $50.7 million for FDA food safety initiatives which the President proposes be funded through new user fees.

Mr. President, in closing, I remind Senators that this will be the last time that my good friend from Arkansas and the distinguished ranking member of the Subcommittee, Senator BUMPERS, will manage this appropriations bill. Senator BUMPERS has been a valued member of the Appropriations Committee for the past 20 years and of this Subcommittee for the past thirteen years. The work of the Subcommittee reflects his intimate knowledge of the programs and activities. Senator BUMPERS has been an advocate of American agriculture and a proponent of programs to improve the quality of life and help bring jobs to rural areas. His many contributions to this process and this bill will continue on after his retirement from the Senate, but his leadership and participation in the work of the Committee in the future will be missed, particularly by this Senator.

Included in this bill is a general provision to designate the United States National Rice Germplasm Evaluation and Enhancement Center in Stuttgart, Arkansas, the ''Dale Bumpers National Rice Research Center.'' The Senator from Arkansas has been an effective advocate of agricultural research and is the father of this ARS research center. I believe it is most appropriate to name this facility in his honor.

Mr. President, I thank the distinguished ranking member of the subcommittee, Senator BUMPERS, as well as all other Members of the Subcommittee for their support and cooperation in putting this bill together.

Mr. President, I believe the bill represents a balanced and responsible set of funding recommendations within the limited resources available to the subcommittee. I ask my colleagues to give it their favorable consideration.

Mr. President, I urge Senators to notice in our bill some important efforts to contrast the process that we followed to appropriate these funds with the proposal the President made when he submitted his budget request for the Department of Agriculture and related agencies.

A great deal of attention has been called to the President's request for additional funding of so-called new initiatives in certain areas covered by this bill. To propose these new funding levels, these so-called new initiatives, the President has had to assume that funds would be generated for those purposes by the enactment by the Congress of user fees. These cover Food Safety and Inspection Service activities. They also cover Food and Drug Administration activities.

The Congress has not enacted these user fees, and there is no expectation that Congress will through the legislative committees that have jurisdiction of these subjects. Therefore, that has led to the appearance that the committee, in its action to bring this bill to the floor, has not appropriated funds that the President has requested for these so-called new initiatives and additional spending programs.

We have not been able to accommodate the President's request because the allocation of funds to this subcommittee is insufficient to cover both the funding of the programs that we have had to fund in the bill, the continuing programs of research and extension and education which I have described so far, many of which are above the President's requested level, but the additional funds that he presumed would be available to this committee from user fees are not available to the committee, and therefore, for some accounts, it may appear that the committee is not funding those activities at the levels the President promised to secure the funding.

I think that explanation will serve to alleviate some concerns that I have heard expressed. One was expressed in the meeting of our full committee when this bill was under consideration, that we were going to put in jeopardy in some way, by having the funding levels that we had for food safety, the safety of school lunch food that is consumed by students at school. We have actually increased the programs that help safeguard the food supply well over and above what the President had requested.

He has suggested that funds be allocated to some so-called new initiatives, but he didn't request that we have inspectors in our poultry and meatpacking plants, as we have to have under current law, to inspect those processes and those plants to be sure that the food is packaged and processed in a way that is safe and will result in wholesome, nutritious food supplies for our country. We funded that. We have actually increased the

funding above last year's levels, so that we wouldn't have to close any of these plants or shut them down for any periods of time that would be required if we had not come up with this funding.

I assure Senators that we have taken great care to make sure that the funds are there for this next fiscal year for these food safety programs, including the so-called HACCP program, the new program that has been under development for the last several years in which this committee has cooperated to fund, so that it can bring to the challenge of food safety the latest in technologies and understanding and information so that we don't have to worry that we are not doing enough to help protect the food that is consumed in the United States.

I must say, too, that I think our producers and those who work to bring us this food supply have to be given great credit for the success they have had in producing a reasonably priced, wholesome, nutritious food supply for our country and, beyond that, millions and billions of dollars in excess of what we need in our country for export in the world marketplace.

Senators will also know that one of the areas of emphasis in this legislation is the funding of programs to help make sure that our exporters and our farmers are treated fairly in the international marketplace, that we continue to endeavor to break down barriers to fair trade for American agriculture products.

This morning, we had an opportunity to meet with representatives of a number of national farm organizations who were here in the Capitol to discuss the problems in certain sectors of agriculture in certain regions of this country. The meeting was actually convened by Senator CONRAD BURNS of Montana and Senator PAT ROBERTS of Kansas. The majority leader was President—was present—he may be President, not yet; he may be President later. Senator DICK LUGAR, the chairman of the Senate Agriculture Committee, was present.

We had 12 or 14 Senators involved in this meeting to find out what the suggestions were for helping to deal with some of these problems of low prices on the farm in certain areas and in certain commodities, and problems in trade, problems with tax laws that operate to the detriment of many who own and operate our Nation's farms. It was a good meeting.

I say to Senators that this bill addresses many of the problems that were identified in that meeting this morning. So it is responsive to the concerns that we hear.

We do need to do a more aggressive job to take up for our Nation's farmers both at home, in terms of regulations and tax policies which make it hard to operate or more expensive, and in terms of trade policies and national initiatives, to be sure that we have an opportunity to sell what we produce in the international marketplace at competitive prices, so there can be profit in agriculture and we can continue to reap the benefit in our country and our economy, in all aspects of our economy that are related and involved with agriculture, of a healthy, vibrant agriculture economy.

We have all heard how many jobs depend upon our farmers, how many people are in the processing businesses, the value-added processing of food products, the transportation, the inputs that go into the farming operations in every rural community and every State in this great Nation. It is a huge business enterprise. And it deserves the sensitive support of the policymakers in Washington and a department of agriculture that cares when there is a problem on the farm and moves quickly to try to deal with it.

I think this legislation is consistent with those aims and those goals and those interests that we all have here in the Senate. I am hopeful that Senators will review the bill and give it their full support. And I hope Senators who have suggestions for changes in the bill will come to the floor and present those suggestions, and we will consider them in a very careful and sympathetic way.

We just as soon there not be any amendments. We think this is a good bill. We hope Senators will agree with us. We do have some committee amendments, and we have recommendations that have been cleared on both sides of the aisle for changes in the bill after the bill was considered in our committee.

At this time, Mr. President, I ask unanimous consent that a table comparing the committee's recommendations for fiscal year 1999 to the fiscal year 1998 levels and the President's fiscal year 1999 budget estimates be printed in the RECORD.

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

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1998 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1999

Item	1998 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or −)	
				1998 appropriation	Budget estimate
TITLE I—AGRICULTURAL PROGRAMS					
Production, Processing, and Marketing					
Office of the Secretary	$2,836,000	$2,941,000	$2,836,000		−$105,000
Executive Operations:					
Chief Economist	5,048,000	5,823,000	5,048,000		−775,000
Commission on 21st Century Production Agriculture		350,000			−350,000
National Appeals Division	11,718,000	13,297,000	11,718,000		−1,579,000
Office of Budget and Program Analysis	5,986,000	6,045,000	5,986,000		−59,000
Office of Chief Information Officer	4,773,000	7,222,000	5,551,000	+$778,000	−1,671,000
Total, Executive Operations	27,525,000	32,737,000	28,303,000	+778,000	−4,434,000
Office of the Chief Financial Officer	4,283,000	4,562,000	4,283,000		−279,000
Office of the Assistant Secretary for Administration	613,000	636,000	613,000		−23,000
Agriculture buildings and facilities and rental payments	131,085,000	147,689,000	137,184,000	+6,099,000	−10,505,000
Payments to GSA	(98,600,000)	(108,057,000)	(108,057,000)	(+9,457,000)	
Building operations and maintenance	(24,785,000)	(24,127,000)	(24,127,000)	(−658,000)	
Repairs, renovations, and construction	(5,000,000)	(15,505,000)	(5,000,000)		(−10,505,000)
Relocation expenses	(2,700,000)			(−2,700,000)	
Hazardous waste management	15,700,000	15,700,000	15,700,000		
Departmental administration	29,231,000	32,168,000	27,034,000	−2,197,000	−5,134,000
Outreach for socially disadvantaged farmers	3,000,000	10,000,000	3,000,000		−7,000,000
Office of the Assistant Secretary for Congressional Relations	3,668,000	3,814,000	3,668,000		−146,000
Office of Communications	8,138,000	8,319,000	8,138,000		−181,000
Office of the Inspector General	63,128,000	87,689,000	63,128,000		−24,561,000
Office of the General Counsel	28,759,000	30,446,000	28,759,000		−1,687,000
Office of the Under Secretary for Research, Education and Economics	540,000	560,000	540,000		−20,000
Economic Research Service	71,604,000	55,839,000	53,109,000	−18,495,000	−2,730,000
National Agricultural Statistics Service	118,048,000	107,190,000	103,964,000	−14,084,000	−3,226,000
Census of Agriculture	(36,327,000)	(23,741,000)	(23,599,000)	(−12,728,000)	(−142,000)
Agricultural Research Service	744,382,000	776,828,000	767,921,000	+23,539,000	−8,907,000
Buildings and facilities	80,630,000	35,900,000	45,430,000	−35,200,000	+9,530,000
Total, Agricultural Research Service	825,012,000	812,728,000	813,351,000	−11,661,000	+623,000
Cooperative State Research, Education, and Extension Service:					
Research and education activities	431,410,000	412,589,000	434,782,000	+3,372,000	+22,193,000
Native Americans Institutions Endowment Fund	(4,600,000)	(4,600,000)	(4,600,000)		
Extension Activities	423,376,000	418,651,000	432,181,000	+8,805,000	+13,530,000
Total, Cooperative State Research, Education, and Extension Service	854,786,000	831,240,000	866,963,000	+12,177,000	+35,723,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1998 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1999—Continued

Item	1998 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or −)	
				1998 appropriation	Budget estimate
Office of the Assistant Secretary for Marketing and Regulatory Programs	618,000	642,000	618,000		−24,000
Animal and Plant Health Inspection Service:					
Salaries and expenses	425,932,000	417,752,000	424,473,000	−1,459,000	+6,721,000
AQI user fees	(88,000,000)	(100,000,000)	(95,000,000)	(+7,000,000)	(−5,000,000)
Buildings and facilities	4,200,000	5,200,000	4,200,000		−1,000,000
Total, Animal and Plant Health Inspection Service	430,132,000	422,952,000	428,673,000	−1,459,000	+5,721,000
Agricultural Marketing Service:					
Marketing Services	46,567,000	58,469,000	45,567,000	−1,000,000	−12,902,000
New user fees	(4,000,000)	(4,000,000)	(4,000,000)		
(Limitation on administrative expenses, from fees collected)	(59,521,000)	(60,730,000)	(59,521,000)		(−1,209,000)
Funds for strengthening markets, income, and supply (transfer from section 32)	10,690,000	10,998,000	10,998,000	+308,000	
Payments to states and possessions	1,200,000	1,200,000	1,200,000		
Total, Agricultural Marketing Service	58,457,000	70,667,000	57,765,000	−692,000	−12,902,000
Grain Inspection, Packers and Stockyards Administration	25,390,000	11,797,000	26,390,000	+1,000,000	+14,593,000
Inspection and Weighing Services (limitation on administrative expenses, from fees collected)	(43,092,000)	(42,557,000)	(42,557,000)	(−535,000)	
Office of the Under Secretary for Food Safety	446,000	598,000			−152,000
Food Safety and Inspection Service	588,761,000	149,566,000	605,149,000	+16,388,000	+455,583,000
Lab accreditation fees [1]	(1,000,000)	(1,000,000)	(1,000,000)		
Total, Production, Processing, and Marketing	3,291,760,000	2,840,480,000	3,279,614,000	−12,146,000	+439,134,000
Farm Assistance Programs					
Office of the Under Secretary for Farm and Foreign Agricultural Services	572,000	597,000	572,000		−25,000
Farm Service Agency:					
Salaries and expenses	699,579,000	723,478,000	710,842,000	+11,263,000	−12,636,000
(Transfer from export loans)	(589,000)	(672,000)	(589,000)		(−83,000)
(Transfer from Public Law 480)	(815,000)	(845,000)	(815,000)		(−30,000)
(Transfer from ACIF)	(209,861,000)	(227,673,000)	(209,861,000)		(−17,812,000)
Total, salaries and expenses	(910,844,000)	(952,668,000)	(922,107,000)	(+11,263,000)	(−30,561,000)
State mediation grants	2,000,000	4,000,000	2,000,000		−2,000,000
Dairy indemnity program	550,000	450,000	450,000	−100,000	
Total, Farm Service Agency	702,129,000	727,928,000	713,292,000	+11,163,000	−14,636,000
Agricultural Credit Insurance Fund Program Account:					
Loan authorizations:					
Farm ownership loans:					
Direct	(78,320,000)	(85,000,000)	(63,872,000)	(−14,448,000)	(−21,128,000)
Guaranteed	(425,000,000)	(425,031,000)	(425,000,000)		(−31,000)
Subtotal	(503,320,000)	(510,031,000)	(488,872,000)	(−14,448,000)	(−21,159,000)
Farm operating loans:					
Direct	(565,000,000)	(500,000,000)	(560,472,000)	(−4,528,000)	(+60,472,000)
Guaranteed unsubsidized	(992,906,000)	(1,700,000,000)	(992,906,000)		(−707,094,000)
Guaranteed subsidized	(235,000,000)	(200,000,000)	(235,000,000)		(+35,000,000)
Subtotal	(1,792,906,000)	(2,400,000,000)	(1,788,378,000)	(−4,528,000)	(−611,622,000)
Indian tribe land acquisition loans	(1,000,000)	(1,003,000)	(1,000,000)		(−3,000)
Emergency disaster loans	(25,000,000)	(25,000,000)	(25,000,000)		
Boll weevil eradication loans	(53,467,000)	(30,000,000)	(40,000,000)	(−13,467,000)	(+10,000,000)
Credit sales of acquired property	(25,000,000)	(25,000,000)	(25,000,000)		
Total, Loan authorizations	(2,400,693,000)	(2,991,034,000)	(2,368,250,000)	(−32,443,000)	(−622,784,000)
Loan subsidies:					
Farm ownership loans:					
Direct	8,329,000	12,725,000	9,562,000	+1,233,000	−3,163,000
Guaranteed	16,407,000	6,758,000	6,758,000	−9,649,000	
Subtotal	24,736,000	19,483,000	16,320,000	−8,416,000	−3,163,000
Farm operating loans:					
Direct	36,823,000	34,150,000	38,280,000	+1,457,000	+4,130,000
Guaranteed unsubsidized	11,617,000	19,720,000	11,518,000	−99,000	−8,202,000
Guaranteed subsidized	22,654,000	17,480,000	20,539,000	−2,115,000	+3,059,000
Subtotal	71,094,000	71,350,000	70,337,000	−757,000	−1,013,000
Indian tribe land acquisition	132,000	153,000	153,000	+21,000	
Emergency disaster loans	6,008,000	5,900,000	5,900,000	−108,000	
Boll weevil loans subsidy	472,000	432,000	576,000	+104,000	+144,000
Credit sales of acquired property	3,255,000	3,260,000	3,260,000	+5,000	
Total, Loan subsidies	105,697,000	100,578,000	96,546,000	−9,151,000	−4,032,000
ACIF expenses:					
Salaries and expense (transfer to FSA)	209,861,000	227,673,000	209,861,000		−17,812,000
Administrative expenses	10,000,000	10,000,000	10,000,000		
Total, ACIF expenses	219,861,000	237,673,000	219,861,000		−17,812,000
Total, Agricultural Credit Insurance Fund	325,558,000	338,251,000	316,407,000	−9,151,000	−21,844,000
(Loan authorization)	(2,400,693,000)	(2,991,034,000)	(2,368,250,000)	(−32,443,000)	(−622,784,000)
Total, Farm Service Agency	1,027,687,000	1,066,179,000	1,029,699,000	+2,012,000	−36,480,000
Risk Management Agency:					
Administrative and operating expenses	64,000,000	66,000,000	64,000,000		−2,000,000
Sales commission of agents	188,571,000			−188,571,000	
Total, Risk Management Agency	252,571,000	66,000,000	64,000,000	−188,571,000	−2,000,000
Total, Farm Assistance Programs	1,280,830,000	1,132,776,000	1,094,271,000	−186,559,000	−38,505,000
Corporations					
Federal Crop Insurance Corporation: Federal Crop Insurance Corporation fund	1,584,135,000	1,504,036,000	1,504,036,000	−80,099,000	
Commodity Credit Corporation Fund:					
Reimbursement for net realized losses	783,507,000	8,439,000,000	8,439,000,000	+7,655,493,000	
Operations and maintenance for hazardous waste management (limitation on administrative expenses)	(5,000,000)	(5,000,000)	(5,000,000)		
Total, Corporations	2,367,642,000	9,943,036,000	9,943,036,000	+7,575,394,000	
Total, title I, Agricultural Programs	6,940,232,000	13,916,292,000	14,316,921,000	+7,376,689,000	+400,629,000
(By transfer)	(211,265,000)	(229,190,000)	(211,265,000)		(−17,925,000)
(Loan authorization)	(2,400,693,000)	(2,991,034,000)	(2,368,250,000)	(−32,443,000)	(−622,784,000)
(Limitation on administrative expenses)	(107,613,000)	(108,287,000)	(107,078,000)	(−535,000)	(−1,209,000)

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1998 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1999—Continued

Item	1998 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or −)	
				1998 appropriation	Budget estimate
TITLE II—CONSERVATION PROGRAMS					
Office of the Under Secretary for Natural Resources and Environment	693,000	719,000	693,000		−26,000
Natural Resources Conservation Service:					
Conservation operations	632,853,000	742,231,000	638,231,000	+5,378,000	−104,000,000
Watershed surveys and planning [2]	11,190,000		11,190,000		+11,190,000
Watershed and flood prevention operations [3]	101,036,000	49,000,000	101,036,000		+52,036,000
Resource conservation and development	34,377,000	34,377,000	34,377,000		
Forestry incentives program	6,325,000		6,325,000		+6,325,000
Total, Natural Resources Conservation Service	785,781,000	825,608,000	791,159,000	+5,378,000	−34,449,000
Total, title II, Conservation Programs	786,474,000	826,327,000	791,852,000	+5,378,000	−34,475,000
TITLE III—RURAL ECONOMIC AND COMMUNITY DEVELOPMENT PROGRAMS					
Office of the Under Secretary for Rural Development	588,000	611,000	588,000		−23,000
Rural community advancement program	652,197,000	715,172,000	700,201,000	+48,004,000	−14,971,000
Delta region economic development program		26,000,000			−26,000,000
Rural Housing Service:					
Rural Housing Insurance Fund Program Account:					
Loan authorizations:					
Single family (sec. 502)	(1,000,000,000)	(1,000,000,000)	(1,000,000,000)		
Unsubsidized guaranteed	(3,000,000,000)	(3,000,000,000)	(3,000,000,000)		
Housing repair (sec. 504)	(30,000,000)	(25,001,000)	(30,000,000)		(+4,999,000)
Farm labor (sec. 514)	(15,000,000)	(32,108,000)	(15,758,000)	(+758,000)	(−16,350,000)
Rental housing (sec. 515)	(128,640,000)	(100,000,000)	(128,640,000)		(+28,640,000)
Multi-family housing guarantees (sec. 538)	(19,700,000)	(150,000,000)	(75,000,000)	(+55,300,000)	(−75,000,000)
Site loans (sec. 524)	(600,000)	(5,000,000)	(5,000,000)	(+4,400,000)	
Self-help housing land development fund	(587,000)	(5,000,000)	(5,000,000)	(+4,413,000)	
Credit sales of acquired property	(25,000,000)	(30,007,000)	(25,000,000)		(−5,007,000)
Total, Loan authorizations	(4,219,527,000)	(4,347,116,000)	(4,284,398,000)	(+64,871,000)	(−62,718,000)
Loan subsidies:					
Single family (sec. 502)	128,100,000	118,200,000	118,200,000	−9,900,000	
Unsubsidized guaranteed	6,900,000	2,700,000	2,700,000	−4,200,000	
Housing repair (sec. 504)	10,300,000	8,808,000	10,569,000	+269,000	+1,761,000
Multi-family housing guarantees (sec. 538)	1,200,000	3,480,000	1,740,000	+540,000	−1,740,000
Farm labor (sec. 514)	7,388,000	16,706,000	8,199,000	+811,000	−8,507,000
Rental housing (sec. 515)	68,745,000	48,250,000	62,069,000	−6,676,000	+13,819,000
Site loans (sec. 524)		16,500	16,000	+16,000	−500
Credit sales of acquired property	3,492,000	4,672,000	3,826,000	+334,000	−846,000
Self-help housing land development fund	17,000	282,000	282,000	+265,000	
Total, Loan subsidies	226,142,000	203,114,500	207,601,000	−18,541,000	+4,486,500
RHIF administrative expenses (transfer to RHS)	354,785,000	367,857,000	360,785,000	+6,000,000	−7,072,000
Rental assistance program:					
(Sec. 521)	535,497,000	577,497,000	577,497,000	+42,000,000	
(Sec. 502(c)(5)(D))	5,900,000	5,900,000	5,900,000		
Total, Rental assistance program	541,397,000	583,397,000	583,397,000	+42,000,000	
Total, Rural Housing Insurance Fund	1,122,324,000	1,154,368,500	1,151,783,000	+29,459,000	−2,585,500
(Loan authorization)	(4,219,527,000)	(4,347,116,000)	(4,284,398,000)	(+64,871,000)	(−62,718,000)
Mutual and self-help housing grants	26,000,000	26,000,000	26,000,000		
Rural community fire protection grants	2,000,000			−2,000,000	
Rural housing assistance grants	45,720,000	46,900,000	45,720,000		−1,180,000
Subtotal, grants and payments	73,720,000	72,900,000	71,720,000	−2,000,000	−1,180,000
RHS expenses:					
Salaries and expenses	57,958,000	60,978,000	60,978,000	+3,020,000	
(Transfer from RHIF)	(354,785,000)	(367,857,000)	(360,785,000)	(+6,000,000)	(−7,072,000)
Total, RHS expenses	(412,743,000)	(428,835,000)	(421,763,000)	(+9,020,000)	(−7,072,000)
Total, Rural Housing Service	1,254,002,000	1,288,246,500	1,284,481,000	+30,479,000	−3,765,500
(Loan authorization)	(4,219,527,000)	(4,347,116,000)	(4,284,398,000)	(+64,871,000)	(−62,718,000)
Rural Business-Cooperative Service:					
Rural Development Loan Fund Program Account:					
(Loan authorization)	(35,000,000)	(35,000,000)	(33,000,000)	(−2,000,000)	(−2,000,000)
Loan subsidy	16,888,000	17,622,000	16,615,000	−273,000	−1,007,000
Administrative expenses (transfer to RBCS)	3,482,000	3,547,000	3,482,000		−65,000
Total, Rural Development Loan Fund	20,370,000	21,169,000	20,097,000	−273,000	−1,072,000
Rural Economic Development Loans Program Account:					
(Loan authorization)	(25,000,000)	(15,000,000)	(23,000,000)	(−2,000,000)	(+8,000,000)
Direct subsidy	5,978,000	3,783,000	5,801,000	−177,000	+2,018,000
Rural cooperative development grants	3,000,000	5,700,000	3,000,000		−2,700,000
RBCS expenses:					
Salaries and expenses	25,680,000	26,396,000	25,680,000		−716,000
(Transfer from RDLFP)	(3,482,000)	(3,547,000)	(3,482,000)		(−65,000)
Total, RBCS expenses	(29,162,000)	(29,943,000)	(29,162,000)		(−781,000)
Total, Rural Business-Cooperative Service	55,028,000	57,048,000	54,578,000	−450,000	−2,470,000
(By transfer)	(3,482,000)	(3,547,000)	(3,482,000)		(−65,000)
(Loan authorization)	(60,000,000)	(50,000,000)	(56,000,000)	(−4,000,000)	(+6,000,000)
Alternative Agricultural Research and Commercialization Revolving Fund	7,000,000	10,000,000	7,000,000		−3,000,000
Rural Utilities Service:					
Rural Electrification and Telecommunications Loans Program Account:					
Loan authorizations:					
Direct loans:					
Electric 5 percent	(125,000,000)	(55,000,000)	(71,500,000)	(−53,500,000)	(+16,500,000)
Telecommunications 5 percent	(75,000,000)	(50,000,000)	(75,000,000)		(+25,000,000)
Subtotal	(200,000,000)	(105,000,000)	(146,500,000)	(−53,500,000)	(+41,500,000)
Treasury rates: Telecommunications	(300,000,000)	(300,000,000)	(250,000,000)	(−50,000,000)	(−50,000,000)
Muni-rate: Electric	(500,000,000)	(250,000,000)	(295,000,000)	(−205,000,000)	(+45,000,000)
FFB loans:					
Electric, regular	(300,000,000)	(300,000,000)	(700,000,000)	(+400,000,000)	(+400,000,000)
Telecommunications	(120,000,000)	(120,000,000)	(120,000,000)		
Subtotal	(420,000,000)	(420,000,000)	(820,000,000)	(+400,000,000)	(+400,000,000)

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1998 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1999—Continued

Item	1998 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or −)	
				1998 appropriation	Budget estimate
Total, Loan authorizations	(1,420,000,000)	(1,075,000,000)	(1,511,500,000)	(+91,500,000)	(+436,500,000)
Loan subsidies:					
Direct loans:					
Electric 5 percent	9,325,000	7,172,000	9,325,000		+2,153,000
Telecommunications 5 percent	2,940,000	4,895,000	7,342,000	+4,402,000	+2,447,000
Subtotal	12,265,000	12,067,000	16,667,000	+4,402,000	+4,600,000
Treasury rates: Telecommunications	60,000	810,000	675,000	+615,000	−135,000
Muni-rate: Electric	21,100,000	21,900,000	25,842,000	+4,742,000	+3,942,000
FFB loans: Electric, regular	2,760,000			−2,760,000	
Total, Loan subsidies	36,185,000	34,777,000	43,184,000	+6,999,000	+8,407,000
RETLP administrative expenses (transfer to RUS)	29,982,000	32,000,000	29,982,000		−2,018,000
Total, Rural Electrification and Telecommunications Loans Program Account	66,167,000	66,777,000	73,166,000	+6,999,000	+6,389,000
(Loan authorization)	(1,420,000,000)	(1,075,000,000)	(1,511,500,000)	(+91,500,000)	(+436,500,000)
Rural Telephone Bank Program Account:					
(Loan authorization)	(175,000,000)	(175,000,000)	(140,000,000)	(−35,000,000)	(−35,000,000)
Direct loan subsidy	3,710,000	4,637,500	3,710,000		−927,500
RTP administrative expenses (transfer to RUS)	3,000,000	3,000,000	3,000,000		
Total	6,710,000	7,637,500	6,710,000		−927,500
Distance learning and telemedicine program:					
(Loan authorization)	(150,000,000)	(150,000,000)	(150,000,000)		
Direct loan subsidy	30,000	180,000	180,000	+150,000	
Grants	12,500,000	15,000,000	12,500,000		−2,500,000
Total	12,530,000	15,180,000	12,680,000	+150,000	−2,500,000
RUS expenses:					
Salaries and expenses	33,000,000	33,445,000	33,000,000		−445,000
(Transfer from RETLP)	(29,982,000)	(32,000,000)	(29,982,000)		(−2,018,000)
(Transfer from RTP)	(3,000,000)	(3,000,000)	(3,000,000)		
Total, RUS expenses	(65,982,000)	(68,445,000)	(65,982,000)		(−2,463,000)
Total, Rural Utilities Service	118,407,000	123,039,500	125,556,000	+7,149,000	+2,516,500
(By transfer)	(32,982,000)	(35,000,000)	(32,982,000)		(−2,018,000)
(Loan authorization)	(1,745,000,000)	(1,400,000,000)	(1,801,500,000)	(+56,500,000)	(+401,500,000)
Total, title III, Rural Economic and Community Development Programs	2,087,222,000	2,220,117,000	2,172,404,000	+85,182,000	−47,713,000
(By transfer)	(391,249,000)	(406,404,000)	(397,249,000)	(+6,000,000)	(−9,155,000)
(Loan authorization)	(6,024,527,000)	(5,797,116,000)	(6,141,898,000)	(+117,371,000)	(+344,782,000)
TITLE IV—DOMESTIC FOOD PROGRAMS					
Office of the Under Secretary for Food, Nutrition and Consumer Services	554,000	573,000	554,000		−19,000
Food and Consumer Service:					
Child nutrition programs	2,612,675,000	3,887,703,000	4,171,747,000	+1,559,072,000	+284,044,000
Discretionary spending	3,750,000	10,000,000		−3,750,000	−10,000,000
Transfer from section 32	5,151,391,000	5,332,194,000	5,048,150,000	−103,241,000	−284,044,000
Total, Child nutrition programs	7,767,816,000	9,229,897,000	9,219,897,000	+1,452,081,000	−10,000,000
Special supplemental nutrition program for women, infants, and children (WIC)	3,924,000,000	4,081,000,000	3,924,000,000		−157,000,000
Reserve		(20,000,000)			(−20,000,000)
Food stamp program:					
Expenses	23,736,479,000	22,365,806,000	22,365,806,000	−1,370,673,000	
Reserve	100,000,000	1,000,000,000	100,000,000		−900,000,000
Nutrition assistance for Puerto Rico	1,204,000,000	1,236,000,000	1,236,000,000	+32,000,000	
The emergency food assistance program	100,000,000	100,000,000	80,000,000	−20,000,000	−20,000,000
Total, Food stamp program	25,140,479,000	24,701,806,000	23,781,806,000	−1,358,673,000	−920,000,000
Commodity assistance program	141,000,000	317,081,000	141,000,000		−176,081,000
Food donations programs for selected groups:					
Needy family program	1,165,000		1,081,000	−84,000	+1,081,000
Elderly feeding program	140,000,000		140,000,000		+140,000,000
Total, Food donations programs [4]	141,165,000		141,081,000	−84,000	+141,081,000
Food program administration	107,505,000	111,848,000	109,069,000	+1,564,000	−2,779,000
Total, Food and Consumer Service	37,221,965,000	38,441,632,000	37,316,853,000	+94,888,000	−1,124,779,000
Total, title IV, Domestic Food Programs	37,222,519,000	38,442,205,000	37,317,407,000	+94,888,000	−1,124,798,000
TITLE V—FOREIGN ASSISTANCE AND RELATED PROGRAMS					
Foreign Agricultural Service and General Sales Manager:					
Appropriation	131,295,000	141,087,000	131,795,000	+500,000	−9,292,000
(Transfer from export loans)	(3,231,000)	(3,413,000)	(3,231,000)		(−182,000)
(Transfer from Public Law 480)	(1,035,000)	(1,093,000)	(1,035,000)		(−58,000)
Total, Foreign Agriculture Service and General	135,561,000	145,593,000	136,061,000	+500,000	−9,532,000
Public Law 480 Program and Grant Accounts:					
Title I—Credit sales:					
Program level	(244,508,000)	(111,558,000)	(221,083,000)	(−23,425,000)	(+109,525,000)
Direct loans	(226,900,000)	(102,163,000)	(203,475,000)	(−23,425,000)	(+101,312,000)
Ocean freight differential	17,608,000	9,395,000	17,608,000		+8,213,000
Title II—Commodities for disposition abroad:					
Program level	(837,000,000)	(837,000,000)	(837,000,000)		
Appropriation	837,000,000	837,000,000	837,000,000		
Title III—Commodity grants:					
Program level	(30,000,000)	(30,000,000)	(30,000,000)		
Appropriation	30,000,000	30,000,000	30,000,000		
Loan subsidies	176,596,000	88,667,000	176,596,000		+87,929,000
Salaries and expenses:					
General Sales Manager (transfer to FAS)	1,035,000	1,093,000	1,035,000		−58,000
Farm Service Agency (transfer to FSA)	815,000	845,000	815,000		−30,000
Subtotal	1,850,000	1,938,000	1,850,000		−88,000
Total, Public Law 480:					
Program level	(1,111,508,000)	(978,558,000)	(1,088,083,000)	(−23,425,000)	(+109,525,000)
Appropriation	1,063,054,000	967,000,000	1,063,054,000		+96,054,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1998 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1999—Continued

Item	1998 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or −)	
				1998 appropriation	Budget estimate
CCC Export Loans Program Account:					
Loan guarantees: Export credit	(5,500,000,000)			(−5,500,000,000)	
Loan subsidy	527,546,000			−527,546,000	
Emerging markets export credit	(200,000,000)			(−200,000,000)	
Salaries and expenses (Export Loans):					
General Sales Manager (transfer to FAS)	3,231,000	3,413,000	3,231,000		−182,000
Farm Service Agency (transfer to FSA)	589,000	672,000	589,000		−83,000
Total, CCC Export Loans Program Account	531,366,000	4,085,000	3,820,000	−527,546,000	−265,000
Total, title V, Foreign Assistance and Related Programs	1,725,715,000	1,112,172,000	1,198,669,000	−527,046,000	+86,497,000
(By transfer)	(4,266,000)	(4,506,000)	(4,266,000)		(−240,000)
TITLE VI—RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION					
DEPARTMENT OF HEALTH AND HUMAN SERVICES					
Food and Drug Administration					
Salaries and expenses, direct appropriation	857,501,000	878,884,000	940,367,000	+82,866,000	+61,483,000
Prescription drug user fee act	(117,122,000)	(126,845,000)	(132,273,000)	(+15,151,000)	(+5,428,000)
Mammography clinics user fee	(13,966,000)	(14,385,000)	(14,385,000)	(+419,000)	
Subtotal, program level	(988,589,000)	(1,020,114,000)	(1,087,025,000)	(+98,436,000)	(+66,911,000)
Buildings and facilities	21,350,000	8,350,000	12,350,000	−9,000,000	+4,000,000
Rental payments (FDA)	46,294,000	82,866,000		−46,294,000	−82,866,000
By transfer from PDUFA		(5,428,000)			(−5,428,000)
Subtotal, program level	(46,294,000)	(88,294,000)		(−46,294,000)	(−88,294,000)
Total, Food and Drug Administration	925,145,000	970,100,000	952,717,000	+27,572,000	−17,383,000
DEPARTMENT OF THE TREASURY					
Financial Management Service: Payments to the Farm Credit System Financial Assistance Corporation	7,728,000	2,565,000	2,565,000	−5,163,000	
INDEPENDENT AGENCIES					
Commodity Futures Trading Commission	58,101,000	63,360,000	61,000,000	+2,899,000	−2,360,000
Farm Credit Administration (limitation on administrative expenses)	(34,423,000)			(−34,423,000)	
Total, title VI, Related Agencies and Food and Drug Administration	990,974,000	1,036,025,000	1,016,282,000	+25,308,000	−19,743,000
TITLE VII—EMERGENCY APPROPRIATIONS					
DEPARTMENT OF AGRICULTURE					
Farm Service Agency					
Emergency conservation program	34,000,000			−34,000,000	
Tree assistance program	14,000,000			−14,000,000	
Agricultural Credit Insurance Fund Program Account:					
Emergency insured loans:					
Loan subsidy	21,000,000			−21,000,000	
(Loan authorization)	87,400,000			−87,400,000	
Total, Farm Service Agency	69,000,000			−69,000,000	
Commodity Credit Corporation					
Livestock disaster assistance fund	4,000,000			−4,000,000	
Dairy production indemnity assistance program	6,800,000			−6,800,000	
Total, Commodity Credit Corporation	10,800,000			−10,800,000	
Natural Resources Conservation Service					
Watershed and flood prevention operations	80,000,000			−80,000,000	
Total, title VII, Emergency appropriations	159,800,000			−159,800,000	
Grand total:					
New budget (obligational) authority	49,912,936,000	57,553,138,000	56,813,535,000	+6,900,599,000	−739,603,000
Appropriations	(49,753,136,000)	(57,553,138,000)	(56,813,535,000)	(+7,060,399,000)	(−739,603,000)
(By transfer)	(606,780,000)	(640,100,000)	(612,780,000)	(+6,000,000)	(−27,320,000)
(Loan authorization)	(14,012,620,000)	(8,788,150,000)	(8,510,148,000)	(−5,502,472,000)	(−278,002,000)
(Limitation on administrative expenses)	(142,036,000)	(108,287,000)	(107,078,000)	(−34,958,000)	(−1,209,000)
RECAPITULATION					
Title I—Agricultural programs	6,940,232,000	13,916,292,000	14,316,921,000	+7,376,689,000	+400,629,000
Title II—Conservation programs	786,474,000	826,327,000	791,852,000	+5,378,000	−34,475,000
Title III—Rural economic and community development programs	2,087,222,000	2,220,117,000	2,172,404,000	+85,182,000	−47,713,000
Title IV—Domestic food programs	37,222,519,000	38,442,205,000	37,317,407,000	+94,888,000	−1,124,798,000
Title V—Foreign assistance and related programs	1,725,715,000	1,112,172,000	1,198,669,000	−527,046,000	+86,497,000
Title VI—Related agencies and Food and Drug Administration	990,974,000	1,036,025,000	1,016,282,000	+25,308,000	−19,743,000
Total, new budget (obligational) authority	49,753,136,000	57,553,138,000	56,813,535,000	+7,060,399,000	−739,603,000

[1] In addition to appropriation.
[2] Budget proposes to fund this account under Conservation Operations.
[3] Budget proposes to fund technical assistance for WFPO under Conservation Operations.
[4] Budget proposes to include funding for these programs under the Commodity Assistance Program in fiscal year 1998.

Mr. COCHRAN. This is a revised comparative statement of new budget authority which corrects two errors in the ''FY 1999 Estimates'' column in the same table printed in the committee report that accompanies the bill.

Mr. President, I must also observe, before yielding the floor, that my good friend from Arkansas, who is the distinguished ranking Democrat on the subcommittee on agriculture appropriations, is helping manage this bill this year, and it will be his last opportunity to exercise this important responsibility.

He has chosen not to seek reelection in the State of Arkansas for another term in the Senate. And I must say that it pains me to contemplate going through the process of developing and helping to write an agriculture appropriations bill without his intelligent and thoughtful assistance. He has been a good friend to me since I have been in the Senate. We have worked closely together on a number of issues, not only in agriculture, in rural development, but in other areas as well.

I pointed out earlier in my statement that in recognition of his outstanding

service for the people of Arkansas in the U.S. Senate, and particularly for his work on agriculture research issues, there is included in this bill a general provision to designate the U.S. National Rice Germplasm Evaluation and Enhancement Center in Stuttgart, AR, the ''Dale Bumpers National Rice Research Center.''

The distinguished Senator from Arkansas has been a very effective advocate of agriculture research funds for this ARS Research Center. I think he is the father of that center. I believe it is most appropriate to name this facility in his honor.

Also, I want to express my appreciation to him and the members of his staff, and the other members of the subcommittee on both sides of the aisle, for their assistance and support and cooperation in developing this legislation. I hope the Senate will approve it.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I am most pleased to join my very good friend, Senator COCHRAN, in bringing this bill to the floor. I think that, considering the constraints that Senator COCHRAN—who is really the crafter of this bill—considering the constraints that he was operating under, this is a remarkable bill.

We were allocated, and even in the President's budget request, $1 billion less than we had last year. To try to craft a bill meeting the really mostly legitimate demands—or at least even funding or increased funding—under that kind of a burden was extremely difficult. I did not interfere—tried not to interfere very much in Senator COCHRAN's work because he was already burdened heavily enough in trying to fit all the pieces of this mosaic together. But he deserves the praise and the accolades of every Member of this Senate for what I think is a remarkable achievement.

Mr. President, Senator COCHRAN has outlined the levels of funding provided in this bill for various functions and programs under the jurisdiction of this subcommittee and I will not repeat them. Let me simply say Senator COCHRAN and I have done the best we could with limited resources to maintain the activities at USDA, FDA, and other agencies that are so important to the American people.

I wish I could be equally as pleased with the budgetary hand with which this subcommittee has been dealt, but the reality is that a budget request filled with user fees, initiatives, and other issues coupled with a 302(b) allocation that reduced our available resources well below last year's levels has produced very hard choices for us. As the Washington Post pointed out in an editorial earlier this week related to the fact that our bill freezes the WIC program at last year's level, until the overall budgetary parameters affecting this subcommittee are adjusted, there is little this subcommittee can do. We can't provide more with less.

However, in my view, the bill before us, which Senator COCHRAN has crafted, makes the best of a bad situation. Would I suggest increases in certain programs if the resources were available? Of course I would and I believe Senator COCHRAN would agree with those increases. But it doesn't take a rocket scientist to conclude that when you have less to work with, something has to give. Unfortunately, this year is one in which avoiding the budget ax may itself be a victory.

We hear a lot these days about budget surpluses. We also hear a lot about how to spend those surpluses, such as providing tax cuts. We talk a lot about saving Social Security, but we still count those revenues coming into the Social Security Trust Fund as part of that glorious ''surplus'' which many are eager to divide up and share with their friends.

The other day, a group of people from a very poor part of the East Arkansas Delta were in office asking for help to reduce flooding in their communities. The flooding causes their septic tanks to back up, resulting in sewage floating down the streets of small rural communities and into the ditches throughout the county. When this bill was considered by the full committee, I explained this problem to Senator STEVENS and other members of the Appropriations Committee. Senator STEVENS and others pledged to help and I hope that we will be able to include an amendment to this bill that will provide necessary funds so these people in East Arkansas will have a few of the basic services that many of us take for granted. Still, this leaves Congress with the remaining problem of caps on domestic spending that is affecting the lives of everyday people all across this country.

The immediate future holds little promise for improvement. The Budget Act requires that the coming years will witness continuing declines in discretionary spending, which means the subcommittee's allocation will likely be less next year than this and Senator COCHRAN's headaches (not mine) will be even more severe than they have been these past few weeks. Having said all this, let me come back to the task at hand and simply state that Senator COCHRAN has done all excellent job in making the pieces fit into a very complex mosaic.

As I have suggested, the watchword for this year has been ''maintain''. This bill restores many of the worthwhile programs that were deleted in the President's budget request and even provides a sight increase in the formula base funds for research and extension activities that have been held steady for many years. Conservation and rural development programs are protected as best we can in spite of changes in loan subsidy rates that caused severe problems in maintaining last year's program levels. We protected rural water and sewer programs which are among the best investments the federal government makes. We were also able to maintain many of last year's program levels for rural housing programs.

The WIC program is expected to average more than 7 million participants in fiscal year 1998. This bill provides funds necessary to maintain that caseload. I wish we were able to provide a higher level, but limited resources have left few options. I am willing to work with Senator COCHRAN and other Senators to find ways to provide higher levels for important programs such as WIC if reasonable offsets or additional resources can be identified.

For years, so called ''budget hawks'' have been telling Congress to ''cut the fat''. For this subcommittee, the ''fat'' was eliminated a long, long time ago. Today, we are cutting into the ''lean.'' These cuts hurt farmers and they hurt our agricultural research base which is needed to make possible the means for this planet to avoid global starvation in years to come. These cuts hurt small rural communities and they hurt children. They deprive our nation of a cutting edge in maintaining a place in global markets. They place our food and blood supply at risk and, quite simply, they harm America. This is certainly not the fault of Senator COCHRAN, but these problems have fallen in his lap, and mine, and on us all. I only hope that in years to come, those who would cut the ''fat'' out of these programs first explain where the ''fat'' is.

I also feel it is important to make a quick reference to an item in the bill that has long been near and dear to my heart as I know it is to Senator COCHRAN. For longer than we have shared a place in the United States Senate, Senator COCHRAN and I have shared a common state boundary along the banks of the mightiest river on the continent. One hundred years ago, the highest form of travel in this country was to take a ride on a Mississippi riverboat. Ten years ago, I sponsored legislation to create the Lower Mississippi River Delta Regional Commission. Sadly, the focus of this Commission was not to highlight the gilded days of luxurious steamboat travel, or the glorious setting in the lobby of Memphis' Peabody Hotel, where legend holds the Delta begins, but to reverse the tragic decline in economic and social prosperity that has resulted in harsh impoverishment up and down this mighty river.

Today, the Chairman of this Commission which we formed in 1988 now sits at a desk in the Oval Office of the White House. President Clinton submitted a budget amendment to this subcommittee to create a Delta Regional Commission based largely on the findings of the Lower Mississippi Delta Regional Commission and in the combined spirit of us all to provide a better life for the most hard pressed of our citizens. The President's request called for $26 million to establish and provide assistance to this worthy cause.

With the limited resources of this subcommittee, we were not able to create a new ''agency'' for the Delta, but we did provide the Secretary of Agriculture authority to work with local groups in the region to help them help themselves. USDA holds many programs important to the Delta such as rural housing, water and sewer programs, conservation, food assistance, research and education, and many, many more. This subcommittee, over the past several years, has provided funding for the Delta Teachers Academy which has been a highly successful program to improve educational opportunities in the region. The Delta Teachers Academy is an example of the progress in rural America that USDA can help foster. I am pleased that the President has added his voice to the call for rejuvenation of this region that two hundred years ago was the western border of our nation, but now lies at its heart.

In closing, I would be remiss not to state publicly my admiration for Senator COCHRAN and the honor I have enjoyed serving with him on this subcommittee. This is my last agriculture appropriations bill to be considered on the floor of the United States Senate, but I will always cherish the friendship and warm memories of my colleagues.

Let me conclude by saying that I do not know of anybody in the Senate for whom I have a higher regard and more respect than I have for Senator COCHRAN. I was chairman of this subcommittee until the Republicans took over in 1995. Senator COCHRAN has chaired it since that time. He was my ranking member when I was chairman. And I daresay, with no reflection on any other chairman and ranking member of any of the subcommittees on appropriations, or I daresay any other committee of the Senate, I doubt that any of them have enjoyed better cooperation with each other than Senator COCHRAN and I have enjoyed, and that is based on the tremendous respect I have for his ability and his understanding of these programs. I concede he understands some of these agricultural programs a lot better than I do.

But having said all of that, Mr. President, I just say it has been a genuine joy to work with Senator COCHRAN. Let me say, again, there is no Member of the Senate for whom I have a higher regard and greater respect. It has been a great honor. I will miss times like this when we come before the Senate to present this bill. I will miss working with Senator COCHRAN on issues that we both care deeply about, but it is time for me to move on. I want to thank Senator COCHRAN for his always generous and laudable remarks that he made about me.

So with that, Mr. President, I hope that Senators who have amendments will come to the floor so we can dispose of this bill as expeditiously as possible. We did very well on the water and energy bill. I would like to think we could do as well on the ag bill. If Senators would come to the floor and offer their amendments, we will.

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

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

The bill clerk proceeded to call the roll.

Mr. BIDEN. 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. BIDEN. Mr. President, I ask unanimous consent that the Senate go into a period of morning business for the purpose of my making a statement on an unrelated issue.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized to speak as if in morning business.

Mr. BIDEN. I thank the President.

THE SEARCH FOR MODERN CHINA: THE PRESIDENT'S CHINA TRIP

Mr. BIDEN. Mr. President, President Clinton, as he prepares to depart for China, carries with him an obligation, which I am sure he will fulfill, to do his best to advance U.S. core interests with Beijing and to communicate the values of the American people directly to the Chinese people.

But what is also at stake, I think, is that there is a concomitant responsibility on the part of the U.S. Senate and the U.S. Congress to adhere to a practice that has been in place for the 25 years that I have been in the U.S. Senate; that is, when a President is abroad, for the Congress to refrain, if only temporarily, from acting on matters that would affect the country which the President is visiting.

There were a number of times when President Reagan was President, when President Nixon was President, when President Ford was President, and when President Bush was President that I had sharp disagreements with their foreign policy initiatives. But never once did I, nor can I remember any of us in either the Republican or the Democratic Party, vote on legislation that would directly affect and impact upon the relationship of the United States and the country which the President was visiting.

So I ask my Republican friends, in the spirit of bipartisanship in the conduct of American foreign policy, to refrain from offering amendments to the DOD bill, if it comes up, that are designed to sanction and/or publicly criticize China at the very moment the President of the United States will be in China. I hope that we could return to that period in our relationship when both parties adhered to that practice.

There is a list of at least 12—maybe as many as 20—China sanction amendments, some of which may very well be justified, that would be attached to, or attempted to be attached to, the defense bill, which I am told is likely to come up on Tuesday of next week.

I make a personal plea to my colleagues to return to the practice that has been honored here on the floor of the U.S. Senate of not engaging in legislative action that impacts upon, or can impact upon, the relationship with the country where the President of the United States, be he a Republican or Democrat, is presently in place. I will be sending a letter to all of my colleagues asking that they do that.

But to continue, Mr. President, the President's mission is not going to be an easy one any more than the first time President Nixon went to China, or President Bush, or any other President who has engaged China.

It comes amid a sometimes rancorous debate over China policy in this country, and the debate is totally appropriate, I might add. I am not suggesting there should not be a very serious debate, and I have no doubt, because of the consequences of the actions we will take as a Nation, it will likely get rancorous at some point.

I have myself asked this Congress to move into special secret session, a rare occurrence, not so many years ago to debate the extension of most-favored-nation status to China. I did so because of my concerns about Chinese proliferation activities, proliferation of missile and/or nuclear technology. And so I am not suggesting the debate will not be heated, and I am not suggesting it should not be thorough. I am not suggesting that it will not have political ramifications. That is all appropriate, normal and reasonable. But the President's mission is going to be made more difficult as a consequence of the debate that is underway.

There is no clear consensus in America, nor, in my view, no clear consensus in the Senate, on how to best advance American interests in the Far East. The Governments of China and the United States will not always see eye to eye, and while the people of the United States and the people of China have much in common—a love of family, a thirst for knowledge, and perhaps most importantly, a desire to see our children and grandchildren live in a world more peaceful and prosperous than our own—we also have profound differences that cannot be overlooked.

In his incisive history, entitled, ''The Search for Modern China,'' Yale historian and prominent Chinese scholar Jonathan Spence writes that China is not yet truly a modern nation.''

Spence defines a modern country as ''one that is both integrated and receptive, fairly sure of its own identity, yet able to join others on equal terms in a quest for new markets, new technologies and new ideas.'' He concludes that the ''search'' for modern China is an ongoing act.

I think Spence is right, and the United States cannot afford to be a spectator in this drama. We need to be active on the world's stage, engaging China as it undergoes a period of extraordinary change.

What do we want? What is in our national interest? Good China policy begins with a clear articulation of U.S. interests, beamed directly to the highest levels of the Chinese Government.

There is virtually no debate in this country over our long-term objectives. Our interests are plain. We seek a more prosperous, open and democratic China, at peace with its neighbors, and respectful of international norms in the area of nonproliferation, human rights and trade.

There is considerable debate, however, about how best to achieve those objectives and whether they can all be achieved simultaneously or whether we will put one ahead of the other during this transition period.

There are some who are convinced that the best way to persuade China's leaders to bring their domestic and foreign policies in line with U.S. expectations is to punish them for each and every misdeed—as perceived by us. This punitive approach, one which I think occasionally is appropriate, is well represented by a raft of Chinese bills passed by the House of Representatives last fall, many of which have been introduced as amendments that I have referenced earlier to the Defense Authorization Act.

Let me say that I share many of the concerns of my colleagues about the administration's handling of China policy. As I said on the Senate floor at this time last year, engagement is not a policy. Engagement is a means to an end. It is the substance of the engagement that matters.

But a ''big stick'' approach to China can hardly be called engagement any more than yielding to China on every issue can be called engagement.

This confrontational approach, or the ''big stick'' approach, flows from the absurd notion that China is unchanging and it will only behave responsibly when it is forced to do so.

I respectfully suggest and favor a more balanced approach. Obviously, I am being subjective in characterizing my approach as more balanced. And it is not really my approach; many share the same view I am about to articulate—a balanced approach that relies upon spelling out the rules of the road to China, inviting them to abide by them, and then monitoring their compliance with their pledges to us and the rest of the international community.

China aspires to be a great power. I welcome that aspiration because great powers live up to the great power obligation in the areas of nonproliferation, human rights and trade.

China has undergone an extraordinary change over the past 25 years, opening to the outside world and dramatically transforming its economic institutions and the tenor of its political discourse. China has evidenced increasing accommodation to international norms.

They have done so, for the most part, because they recognize their own interests dictate greater integration with the global economic markets and security regimes. We should encourage this trend, but we should not hesitate to communicate our concerns both publicly and privately when we think they deviate.

For instance, we should not hesitate to criticize China for its human rights violations. We should publicly encourage China to sign the International Covenant on Civil and Political Rights, and to incorporate its spirit directly into Chinese law.

I was very disappointed when the President decided not to condemn China for human rights violations before the United Nations Human Rights Commission in Geneva. If we are not going to criticize China's human rights violations in front of an international body specifically created to safeguard human rights standards, where are we willing to voice our concerns?

I am also disappointed that China continues to jam Radio Free Asia. With the support of my colleagues in the Senate and the House, I introduced legislation several years ago which created Radio Free Asia. RFA broadcasts reliable news directly to the people of China and Tibet, empowering them to hold their government accountable for its actions. But RFA is being jammed by the Chinese Government. I hope that President Clinton, when he travels to China, will tune in RFA, and if he can't find it on the radio, he should explain to his Chinese hosts that great powers do not restrict access of their people to information.

We can also do more to promote the rule of law in China, bringing the Chinese to this country to see how a truly independent judiciary functions and sending Americans to China to teach them how to create similar institutions there. The administration has requested $5 million for the Asia Foundation to launch a rule of law initiative in China. I support this initiative.

When all else fails, the United States should not hesitate to punish China by using carefully targeted multilateral sanctions. But this should be a last resort, not a reflex.

A wise man on the Foreign Relations Committee, the Senator from Indiana, has pointed out the dangers of an over reliance on ill-defined unilateral sanctions as an instrument of foreign policy.

We have an important role to play in the search for modern China. We can help it to its destination of modernization, or we can throw obstacles in its path. The upcoming summit presents an opportunity for the United States and China to try to bridge some of our differences, a chance to transform the issues from points of contention to examples of cooperation.

We should not expect the world from a single summit. But we can make some progress.

Perhaps no issue at the summit will be more important than that of nonproliferation. I said at the outset that we know clearly what our objectives should be for our policy, where we want a modern China to go. We don't have any misunderstanding of what we would like to see: China at peace with its neighbors, respecting international norms in the areas of nonproliferation, open trade, and human rights.

But at some point, as my dad would say, if everything is equally a high priority, then nothing is a priority. I believe that there is no more important issue at this moment in the history and our relationship with China than nonproliferation. The spread of weapons of mass destruction and the means to deliver them represents a clear and present danger to the security of both the United States and China. We need Chinese cooperation if we are to find ways to promote stability in south Asia, the Korean peninsula, and the Middle East.

China's historic track record in this area has been poor. Indeed, Pakistan probably would not possess the nuclear capacity it demonstrated late last month were it not for the Chinese assistance over the past decades. China cannot escape some responsibility for exacerbating south Asian tensions by engaging in policies that were seen as threatening to India's security.

But more recently, China appears to have undergone a sea change in its attitude. China has joined the Nuclear Non-Proliferation Treaty, the Comprehensive Test Ban Treaty, the Chemical Weapons Convention, the Biological Weapons Convention. China has also agreed to be bound by some, but not all, of the terms of the Missile Technology Control Regime prior to it joining that regime. And, while China's export laws still fall short of international norms, particularly in the area of missile technology, China has been responsive to the administration's interests where we have clearly articulated them.

Last fall, President Clinton secured a commitment from China not to extend any new cooperation to Iran's nuclear program. China has also pledged to halt all cruise missile exports to Iran in direct response to the urging of the U.S. Government. Moreover, China's initial response to nuclear tests on the subcontinent has been constructive thus far. China has avoided taking any steps which might exacerbate tensions or fuel a regional arms race.

There is more, however, that China as a great power should do. As a permanent member of the U.N. Security Council, China should join in an international diplomatic effort designed to identify the source of tensions in south Asia and foster dialog between India and Pakistan and between India and China. China should lead by example, by promoting greater transparency in arms exports, defense expenditures, and military exercises.

China, in my view, should join the Missile Technology Control Regime and agree to bring its export controls on dual-use items and missile-related

technologies up to international standards. In addition, it should join the Nuclear Suppliers Group and develop comprehensive controls on all nuclear-related technologies. Taken together, these steps would not only contribute significantly to peace and stability in south Asia, they would also serve the interests of global nonproliferation.

The administration has accomplished much in the last 6 years: from the Nuclear Non-Proliferation Treaty to the Comprehensive Test Ban Treaty to the Chemical Weapons Convention, et cetera. I asked, today, Assistant Secretary Roth, who testified before the Foreign Relations Committee, why that occurred. Was it merely the persuasiveness of the U.S. President? Was it because of the sticks as well as carrots that we have offered? Or, as this emerging modern power goes through a transformation, is it because they are finally determining on their own that it is in their own interest not to proliferate?

I cannot fathom how, as a political leader sitting in Beijing, I could conclude that the ability of Pakistan to launch a nuclear weapon on the back of a missile that I had provided to them could possibly enhance my security. I cannot understand how anyone in Beijing could conclude that an arms race between India and Pakistan, and the prospect of what we would call theater nuclear weapons being engaged, could possibly do anything other than damage my security as a Chinese leader. I cannot imagine how they could reach that conclusion. But they have, in the past, reached similar conclusions.

But I think what we are beginning to see, and it is presumptuous of me to say this about another country, but I think we are beginning to see the political maturation of a country. It is in its nascent stages, but they are coming to some of these conclusions, not merely because of what we do, not merely because of our urging, but because they begin to see it in their own naked self-interest. The only thing I have observed that causes China, in the recent past, to act against their own naked self-interest is if they are put in a position of being told they must do this or that.

So, although sanctions are appropriate in some circumstances, and stating our view of what constitutes great power behavior is always appropriate, the idea that sanctions are always appropriate when we disagree with China is very mistaken and counterproductive.

The stakes are high. Our success or failure in integrating China more fully into the community of nations, our success or failure at convincing China to live up to the international norms of behavior in the area of nonproliferation, our success or failure in helping to shape the emergence of modern China as a great power, will have profound effect, not only on the future of east Asia and south Asia, not only on the future of Europe, but on the entire world.

Mr. President, about 25 years ago Fox Butterfield, the New York Times bureau chief in Beijing, published a book entitled ''China: Alive in the Bitter Sea.'' In it, Mr. Butterfield gave a moving account of the efforts of ordinary Chinese people to live under the often brutal authoritarian regime that existed at the time.

Today there remains much injustice in China, and the struggle of ordinary people to exercise their universally acknowledged human rights is fought with peril. The outcome of that struggle will be central to the future of the ''middle kingdom.''

But the changes over the past 25 years have been so profound that those returning to China today for the first time since Deng Xiaoping opened the doors—and I went with Senators Javits and Church and others back in those early years of engagement—those who have gone back barely recognize China to be the same country.

Engagement, engagement with a purpose, can bring about changes we seek in China, including in areas of vital importance to our national security, but only if we are both patient and principled.

If we are swayed from our course by those who believe conflict with China is inevitable, or if we are lulled into a false sense of security by those who stand on this floor and confidently predict that China will automatically transform itself into a Jeffersonian democracy as it modernizes, then we will miss out on an opportunity to fulfill our role, as small as it may be, in the search for a modern China.

Mr. President, to conclude, the stakes are high. This is no time for the U.S. Senate—in this significant summer, at this moment when, if China concludes it wishes to devalue its currency, the situation in Asia could become much, much worse, when at the very moment when China is acting responsibly vis-a-vis Korea, we cause it to change its course of action; if at this moment we insist upon all of our agenda being met, we can do irreparable harm to our interests.

I yield the floor, Mr. President, with a final plea to my colleagues: Please, please, on this critical matter of the security interest of the United States of America, please revert to the tradition that has been time honored in this body. While a President of the United States is meeting with a head of state of another country, do not engage in activities, justified or not, that will sanction the country with which the President is at that moment negotiating. That is inappropriate behavior, in my opinion. That is not only partisanship, but it is against the naked self-interest of the United States, and I think it is reprehensible conduct.

I am confident my colleagues will ultimately do the right thing. We have plenty of time to act on, and I may even vote for, some of the proposals relating to the sanctioning of China that are contemplated in the upcoming bill. But, please look at America's interest first, look at the longstanding tradition of bipartisanship on this issue, and allow the President to conduct this major foreign policy foray on his own terms until he returns.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

Mr. BENNETT. Mr. President, I ask unanimous consent that debate only be in order to the pending agriculture appropriations bill until the hour of 6:45 p.m. this evening.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

WORLD AFFAIRS

Mr. BUMPERS. Mr. President, I, first of all, compliment my distinguished colleague from Delaware, Senator BIDEN, for what I thought was a very compelling analysis of what our relationship with China is and what it should be and what the President ought to be doing in China in the way of engagement to improve our relationship.

I agree totally with everything he said. Right now, China, obviously, is not a democracy, though about 40 percent of her economy is private enterprise in the true sense of the word we cherish here.

We have found in the past that when nations begin to permit economic freedom, usually the economic benefits that come from that become highly desirable to the people, and then they begin to seek more freedom, more democracy. On the other hand, you can argue that political democracy and social freedom should come first and everything else will follow. I would like to believe that, but I believe in the case of China, where unbelievable changes have occurred in the last 20

years, the ordinary citizen of this country cannot even begin to fathom the dramatic changes in the culture, even in the political system, and the economy of China.

So I happen to come from the school of thought that believes that when people have economic freedom, political freedom is more likely to ensue than vice versa. I understand all the arguments on human rights. And nobody is going to stand up, who is in his right mind, and say that China does not violate human rights. Of course they do. And I do not care what anybody says, under the best case scenario, you are not going to get the kind of democracy in China overnight that we enjoy in this country.

But I can tell you this. Engagement of China on these issues is going to be 10 times more beneficial to both their citizens and the world than our sitting back with a purist attitude saying that, ''If you don't do all these things we tell you to do, then we're going to quit trading with each other and we're going to quit our dialog with each other. You go ahead and start shipping missiles to Iran. You go ahead and violate the chemical weapons ban which you signed in 1992. And go ahead and violate the test ban treaty which you signed in 1992.'' Who wants that? Who thinks that is a good idea?

I am not saying China would do it, but I am simply saying we are not going to bully a nation of 1.2 billion people. And I think our chances of bringing them into the mainstream are infinitely better if we engage them.

So, No. 1, I applaud the President for going to China. I have a little difficulty with the Tiananmen Square event. But if you wanted to sour the trip from the opening gun, just have the President go there with a precondition that, ''I will not have any dialog with you in Tiananmen Square.'' He can turn right around and get on Air Force One and come home for all the good he is going to do.

Those are the realities, Mr. President. Whether we like them or not, those are the facts. And everybody who knows anything about human psychology knows what would happen if the President took that kind of a stance, which a lot of people in this body have urged him to take.

He should go there resolute on talking about human rights with the Chinese and engage them on it as strongly as he can. He should engage them on any suspected arms shipments or transfers of chemicals that we are concerned about. He should talk to them about all the violations of human rights. And he should ask them about the slave and prison labor. And he should ask them about forced abortions.

There are a lot of forces at work in this country, Mr. President. We are having a very difficult time in this country since the Soviet Union fell. For the last 50 years, politicians in this country have had a field day hating the Soviet Union. We all have. It was a bizarre situation. And the Soviet Union, while they were our allies in World War II, after World War II was over, we had a very—not tenuous—disastrous relationship with them.

And the only reason I make that point is, now that the Soviet Union no longer exists, we have been looking around for an enemy. We do not cope very well without somebody to hate, and China has been elected. You cannot justify $270 billion on defense expenditures unless you have a genuine, certified enemy. So there is a lot of that at work here.

I believe Eisenhower was absolutely right when he described the military-industrial complex as a real threat to the country. It is alive and well. I have always chastised President Eisenhower, whom I admired and thought he was a pretty good President, for not having made that military-industrial complex speech when he took office instead of when he left. We are all awfully courageous when we leave office.

But in any event, there are a lot of people who simply cannot accept China because it is communistic. Even though, as I said, 40 percent of their economy is in the free market sector, politically it still is a Communist Nation. And there is no such thing as real democracy in China.

Mr. President, there are people in this body who are going to vote against the most-favored-nation status of China because of China's treatment of Christian missionaries. I read an interesting story on that this week which pointed out there are 67 million Christians in China and the number is growing all the time. I do not really know how serious the discrimination allegation about religion is in China, but I will tell you, I suspect that it is exaggerated to some extent.

But you have these people who resent China's, at least, reluctance to allow all of these various religious missionaries, especially Christian missionaries, into their country. So they are not going to vote for most-favored-nation status.

And then there is, of course, this anti-Clinton segment. Some people have a very difficult time giving the President credit for anything. And so if they can make President Clinton look bad by going to China to consort with the same people Richard Nixon consorted with, if they can get any mileage out of that, they are going to take advantage of that. So you have that political faction working.

So, Mr. President, I think the President is doing the absolutely right thing. I think he is going to be extremely well prepared for his dialog with the Chinese leaders. I personally believe that the Chinese can have some influence in tranquilizing the hostility between India and Pakistan. And when I say ''tranquilizing,'' I am talking about dampening their hostility toward each other ever so slightly.

Mr. President, I said the other day to the Arkansas Bar Association that I believe religious extremism in any form is dangerous to our Nation and to the world. And the dispute between Pakistan and India is essentially a religious dispute between the Hindus and the Moslems. And if you look around the world—you look in Bosnia, they are all ethnically the same, but you have Catholics and you have Christians and you have Moslems. The Serbs are Russian Orthodox and Christian; and Croatia is essentially Catholic; and Bosnia is essentially Moslem. That is a volatile mix. Something close to 100,000 or 200,000 people have died as a result of the hostilities generated to a large extent to those religious differences.

So if China can be a force in that part of the world to give the rest of us a little respite, a little better feeling about our ability to bring Pakistan and India together—I don't think it is unthinkable at all for a nuclear war to break out between those two nations; hostilities are intense—if China can do anything at all to ''tranquilize'' the situation, we ought to be bringing them right along and telling them ''do everything you can.''

I thought India's excuse for exploding a bomb, because they were afraid of China, was as transparent as Saran Wrap. China and India have always been enemies of a sort, but not nearly the intensity of the relationship between India and Pakistan, for example. In my opinion, they were looking for anything they could get ahold of to justify what they did, which is unforgivable.

When I think about the population of China, I was there in 1978, and the population was 800 million. The population of China since 1978 has grown by 400 million people—140 million more than there are in the United States—which brings me to the second part of this sermon.

Last night, I went downtown to receive a plaque from the Natural Resources Council which is an organization of 72 environmental groups. In my response, on a more serious note, I said I don't want to be the skunk at the lawn party, and I would like to think that I am a great environmentalist, but we talk about ozone depletion, we talk about global warming, we talk about building electric automobiles, and all of these things we are going to do to stop global warming from occurring. But the truth of the matter is we do not talk about the No. 1 environmental problem of the planet, and that is a population out of control.

When I was a young 18-year-old recruit in the Marine Corps in World War II, this Nation had 130 million people. So in that period of time, from the time I was a raw recruit in the Marine Corps until today, we have increased our population by 138 million—268 million, compared to 130 million. At that same time, we had 30 million vehicles in the United States; today, we have 200 million vehicles. Estimates are that by the year 2050 we will have 400 million vehicles. My commute time from

my home to the U.S. Senate in the 23½ years I have been here has increased by 12 minutes.

Today, we are taking 2.5 million acres of arable land that was previously used to grow food to feed ourselves and to export to a hungry world, out of cultivation every year and we are adding 2.5 million people to the population. You do not have to be a rocket scientist to understand that you have a train wreck coming. On top of that, our agricultural yields are becoming static. Soybean yields were up slightly last year, corn yields were flat; wheat yields that we have seen increase over the years are becoming static. We could, perhaps, put a lot more money into research and reverse that trend so that we get greater and greater yields, but isn't it amazing our priorities, when we spend $1.8 billion a year on agricultural research, and we send $40 billion a year down at the Pentagon for them to make things explode louder.

Now, it is really tragic when you think about the problem of the population increase of the planet, not to say anything of the United States. By the year 2100, barring an epidemic or a pandemic, we are going to be standing shoulder to shoulder on this planet. Yes, people, by their very numbers, are polluters. We have to be fed. That means we use up our land. We have to be housed. That means we use up our resources to build houses. We have to be transported so we have to go in an automobile that puts a lot of noxious fumes into the atmosphere and uses up our resources at an exponential rate. On and on it goes.

When you start talking about the problems of the population increase of the planet and what it means for our grandchildren—it makes me shudder to think about it. I must say I take strong exception to those who hold up our foreign aid spending to all of the countries who have family planning programs, when every single country that has a family planning program shows the abortion rate goes down. But I don't want to get into the abortion debate either. I am simply saying you can shove this problem under the rug, which we have been doing a magnificent job of for the last many years, or you can face up to it as China has tried to do.

In 1978, when I was in China the last time, they had a family planning program going there. Since that time, it has worked partially in the big urban areas. It is not working in the rural areas. They still have a culture there that you have to have children to help you till the crops. You have to have children to help you do everything, so they keep having children.

Mrs. Bumpers, just came back from Africa. She was over there trying to help Africans immunize their children. She was in Zimbabwe and the Ivory Coast. She said it was the most exhilarating experience she ever had in her life, watching mothers bring their babies through the hot sands and dust, into these clinics, where they were having what they called national immunization days. She began to give polio doses herself. She said it was the most gratifying experience she had ever had.

She was amazed with some of the progress they are making in Africa. One of the things they have done on the Ivory Coast is cut the birth rate, with family planning, from six per woman to four.

Now, here is a relatively primitive country called the Ivory Coast in Africa, which seems to have a better grip on what the real problems of the world are than we have. There is more to that. I don't want to take any more time, Mr. President. I have said all I can say about what I consider to be the real problems. One of the frustrating things is—and I don't say this with any degree of acrimony or bitterness at all, and it has been a great honor to be one of the less than 1,800 people who ever served in the U.S. Senate, and I will leave here with a heart full of gratitude, hopefully strengthened by great relationships with many colleagues. But I am disenchanted, to some extent, about our inability and our unwillingness to deal with some of the real problems. We do a great job of dealing with the politics of problems, but we have a tough time facing up to the fact that our children are not being well educated.

I am dismayed when I think about the $50 billion or $60 billion surplus we are supposed to have at the end of this year and people are talking about tax cuts. I would not have any objection to that, Mr. President, if that tax cut went to the lower-income groups in this country who are still being relegated to last place. This is a personal opinion. One of the reasons the stock market has gone crazy in the last several years is because there is so much money floating around in this country, people have no choice but to invest it. They are not going to put it into T-bills when they can put it in Microsoft, or something else that will pay 20 to 30 percent, or even more, than a 6-percent bond will. But I can tell you that all of this money that exists in this country that people largely have made out of the stock market has not filtered down to the bottom 40 percent of the people in this country.

I would vote for another minimum wage increase because every statistic I have seen has shown that, No. 1, you don't lose jobs—the traditional argument made against it—and, No. 2, this country is not going to be what it ought to be unless we bring other people up. Every statistic I have seen in the last year is that the rich are still getting richer and the poor, by comparison, are getting poorer.

I would be hard-pressed to vote for a tax cut for the well-off when children are going to school all over Arkansas, being taught by teachers who go into teaching at an entry level of $20,000. Do you know what I think, Mr. President? I think teaching is the toughest job in America. I would rather clean the streets of Washington, DC, and carry garbage than teach school. One of the reasons I feel that way is because I married a schoolteacher and I know what they go through. It is the toughest job in the world. They go through 4 years of college and get a degree in education and go into the schools of my State at an entry level of $20,000. If they are lucky, the next year they will get a cost-of-living increase.

My daughter, who is my pride and joy, is with a law firm downtown. She is not going to teach for $25,000 or $30,000 a year, and she would be a magnificent teacher. There are people all over the country—men and women—who would be great teachers, who are not going into the teaching profession because it simply doesn't pay enough. When you compound the fact—if you agree with me that it is the toughest job on earth—it surely doesn't pay enough.

I was doing an interview this afternoon with a prominent author here in Washington who is writing a book. We were talking about the American people and what is going on. There is something going on in this country that nobody really quite understands. I don't. I probably wasn't very helpful to him because I didn't have any brilliant analysis of what is going on in the country. But I said, ''I think the disenchantment is more a result of the way people feel that the educational system is failing them than anything else.'' I also believe that television, which ought to be this magnificent medium of communicating and making our children so much smarter, is failing us miserably.

Mr. President, I have gone from China to population to schoolteaching in all my meanderings here. But I can tell you there isn't anything wrong with this country that setting our priorities straight would not cure. Until we have an educated electorate, and until we provide an education for every child in this country, not just an education at the elementary and secondary level, but at the college level, until we make the commitment that every kid in this country gets a college education, or at least is not denied a college education for lack of money, don't talk to me about tax cuts.

What makes a country great? What makes a country great is how well their people are educated and, therefore, how civil their people are to each other, what their conduct is. When I see people engaged in certain kinds of conduct you want to ask them, ''Why are you doing that?'' They do it because their parents or nobody else ever told them not to. I could sit here and list all day long the things that are my favorite pet peeves. I am always saying to Betty, ''I wonder why that kid did that.'' She says, ''Because nobody ever told him better.''

So Mr. President, I certainly am not giving up on this Nation. The people of

this country are rhapsodic about one thing, and that is that we got our budget house in order. The fact that we have a surplus this year is nothing short of a miracle, and the people know it. But if we start spending it and squandering it instead of dealing with the problems we still have we will be back in trouble. The other day, Mr. President, you were in the Appropriations Committee when I made a short speech about what a tough time we had crafting this agriculture bill.

I said, ''You know we don't have any money to do much of anything.''

A couple of weeks ago, I had a delegation come to me from the Mississippi River delta, the poorest part of my State. Four communities described graphically for me how, every time they have a heavy rain, sewage runs down the street and runs down the ditches. The health consequences of that are absolutely incalculable. I said, ''I have looked high and low, looked everywhere in this budget, and every other budget, trying to find $2.8 million to alleviate this problem.'' Because I made that speech there in the committee, I think I about got it solved. But I can tell you, that is going to be the greatest thing that has ever happened to those people in those communities. When I was a kid, we didn't understand why people died of typhoid fever in the summer because the outhouse was just 10 steps away from the water well. That is sort of the situation these people are living in.

Mr. President, we have a lot of unmet needs in this country, and I am not voting for any tax cuts until we address those.

I yield the floor.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

COMMODITY FUTURES TRADING COMMISSION

Mr. FAIRCLOTH. Mr. President, I do not have an amendment. I simply want to discuss very briefly an issue that I may later offer an amendment on to this legislation, and it is an issue that I understand you are also interested in, Mr. President. It is concerning the Commodity Futures Trading Commission. The Chairwoman of the Commission, Brooksley Born, is attempting to reverse the current policy at the CFTC that Congress directed over 5 years ago.

Mr. President, the issue is this. We have a $28 trillion swaps market in the United States. The vast majority of these swaps are privately negotiated contracts. They are not traded on any exchange; they are privately negotiated contracts. The business has grown rapidly in the last few years. It has become an important financial tool for institutions to hedge their risks. But, clearly, it is not a trading issue, this is a—it is redundant to say—privately traded issue. These are swaps between those companies.

Yet, the CFTC now has under review a ''concept release''—a good bureaucratic term—a ''concept release'' to regulate these privately negotiated instruments. Essentially, the CFTC wants to vastly broaden its regulatory authority over a multitrillion-dollar market. The problem is that these are negotiations, again, between private firms. Furthermore, if one of the parties in the contract is a bank, these products are regulated by the bank regulators. And we do not need a dual regulation.

The result of the CFTC action will be that a trillion-dollar industry will, very simply, be driven out of this country. It will be driven overseas.

In case anyone thinks that this is just my opinion, in a move that I have rarely seen in Washington—we certainly haven't been seeing lately—in an incredible move, Chairman Greenspan, Secretary Rubin, and Secretary Arthur Levitt issued a joint statement saying they have ''grave concerns'' with what is being proposed to be done by Ms. Born.

How often do you see the three principal financial regulators of the country come together to express grave concern over an issue and rebuke another financial regulator? You simply do not see it happen. They are concerned, and the potential for great loss to this country is just tantamount to it happening.

The Treasury Department has even gone to such lengths as to formally send legislation to the Congress to stop this potential regulation. It is the Treasury Department under Secretary Rubin, and they may even go to such lengths to stop it.

I want to, if I may, Mr. President, read a joint statement. This statement was issued by Mr. Rubin, Mr. Greenspan, and Mr. Levitt.

On May 7, the Commodity Futures Trading Commission (''CFTC'') issued a concept release on over-the-counter derivatives. We have grave concerns about this action and its possible consequences. The OTC derivatives market is a large and important global market. We seriously question the scope of the CFTC's jurisdiction in this area, and we are very concerned about reports that the CFTC's action may increase the legal uncertainty concerning certain types of OTC derivatives.

The concept release raises important public policy issues that should be dealt with the entire regulatory community working with Congress, and we are prepared to pursue, as appropriate, legislation that would provide greater certainty concerning the legal status of OTC derivatives.

Furthermore, Chairman JIM LEACH of the House Banking Committee has introduced similar legislation.

To me, the agreement of this number of people on one issue is unprecedented. We need to wake up and realize that we have a rogue regulator—I know of no nicer way to put it—at the CFTC that is threatening to drive a trillion-dollar business out of the United States.

My amendment, if I introduce it, would simply state that no final rule on this can be promulgated during fiscal year 1999. This is the amendment that I have contemplated.

Mr. President, this is a very complex subject. We do not need to rush to judgment. It needs thorough and careful review. It is not the type of thing that attracts a lot of attention on the Senate or the House floor. As we said, it is not a subject that is easily understood. But even for those who do not understand it, Secretary Rubin, Chairman Greenspan, and Secretary Levitt all agree with House Banking Committee Chairman JIM LEACH that it is a dangerous direction that Ms. Born is heading and one that we should not be going in.

It is simply time for us to stop and give us a year to review the implications of what she is talking about. And, further, the CFTC is up for reauthorization next year anyway. If it needs to be done, that would be the time to do it, and we could address it at that time.

Mr. President, I thank you. I look forward to working with you on this program.

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. DASCHLE. 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.

AMENDMENT NO. 2729

Mr. DASCHLE. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota (Mr. DASCHLE) proposes an amendment numbered 2729.

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

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

(The text of the amendment (No. 2729) is printed in today's RECORD under ''Amendments Submitted.'')

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

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

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:28 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 375. An act for the relief of Margarito Domantay.

H.R. 1949. An act for the relief of Nuratu Olarewaju Abeke Kadiri.

H.R. 3035. An act to establish an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies.

H.R. 3069. An act to extend the Advisory Council on California Indian Policy to allow the Advisory Council to advise Congress on the implementation of the proposals and recommendations of the Advisory Council.

H.R. 3097. An act to terminate the Internal Revenue Code of 1986.

H.R. 3156. An act to present a congressional gold medal to Nelson Rolihlahla Mandela.

H.R. 3796. An act to authorize the Secretary of Agriculture to convey the administrative site for the Rogue River National Forest and use the proceeds for the construction or improvement of offices and support buildings for the Rogue River National Forest and the Bureau of Land Management.

H.R. 3824. An act amending the Fastener Quality Act to exempt from its coverage certain fasteners approved by the Federal Aviation Administration for use in aircraft.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 1847) to improve the criminal law relating to fraud against consumers.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

H.R. 1847. An act to improve the criminal law relating to fraud against consumers.

S. 1900. An act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

At 12:37 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for the elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 375. An act for the relief of Margarita Domantay; to the Committee on the Judiciary.

H.R. 1949. An act for the relief of Nuratu Olarewaju Abeke Kadiri; to the Committee on the Judiciary.

H.R. 3069. An act to extend the Advisory Council on California Indian Policy to allow the Advisory Council to advise Congress on the Implementation of the proposals and recommendations of the Advisory Council; to the Committee on Indian Affairs.

H.R. 3097. An act to terminate the Internal Revenue Code of 1986; to the Committee on Finance.

H.R. 3796. An act to authorize the Secretary of Agriculture to convey the administrative site for the Rogue River National Forest and use the proceeds for the construction of improvement of offices and support buildings for the Rogue River National Forest and the Bureau of Land Management; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times, and place on the calendar:

H.R. 3035. An act to establish an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on June 18, 1998, he had presented to the President of the United States, the following enrolled bill:

S. 1900. An act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–5570. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendments to Rules of Practice and Procedure'' received on June 12, 1998; to the Committee on Finance.

EC–5571. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on fissile materials in the former Soviet Union for fiscal year 1997; to the Committee on Armed Services.

EC–5572. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the Commission's annual report for fiscal year 1997; to the Committee on Energy and Natural Resources.

EC–5573. A communication from the Director of the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''License Term for Medical Use Licenses'' (RIN3150-AF77) received on June 15, 1998; to the Committee on Environment and Public Works.

EC–5574. A communication from the Secretary of State and the Secretary of Defense, transmitting, pursuant to law, a report on plans to enhance coalition interoperability in the face of chemical or biological weapon threats; to the Committee on Foreign Relations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–481. A resolution adopted by the Senate of the Legislature of the State of Alaska relative to compensation of Holocaust victims by the Swiss banking industry; to the Committee on Foreign Relations.

POM–482. A resolution adopted by the National Association of the Physically Handicapped, Inc. (Okemos, Michigan) relative to physician-assisted suicide; to the Committee on Labor and Human Resources.

POM–483. A resolution adopted by the National Association of the Physically Handicapped, Inc. (Okemos, Michigan) relative to non-profit hospital sales; to the Committee on Labor and Human Resources.

POM–484. A resolution adopted by the National Association of the Physically Handicapped, Inc. (Okemos, Michigan) relative to community health care; to the Committee on Labor and Human Resources.

POM–485. A joint resolution adopted by Legislature of the State of Tennessee; to the Committee on Commerce, Science, and Transportation.

SENATE JOINT RESOLUTION NO. 712

Whereas, This General Assembly acknowledges the importance and emerging dependence of business, government and society on the Internet as a growing part of our system of communications and commerce; and

Whereas, The members of this legislative body also recognize that the Internet as a medium of free speech contains, in addition to its many salutory features, potential dangers for society and especially our youth, in that it can provide uncontrolled and instantaneous access to obscenity, child pornography and other adult-oriented materials that are harmful to youth; and

Whereas, In 1996, Congress attempted to place restrictions on the Internet to curb these dangers by the passage of the Communications Decency Act of 1996, which was declared unconstitutional in part by the United States Supreme Court in the case of Reno v. ACLU; and

Whereas, The Internet is in a developing stage and software developments and other market forces may eventually allow Internet providers to provide clean Internet services

or products that will protect children from the harms of the Internet and permit users to block out offensive materials and services without compromising the beneficial aspects of the Internet; and

Whereas, The technology currently exists to more readily control these problems by the use of designated top-level domain site for web sites that contain pornographic and adult-oriented materials and services which if employed will expedite and facilitate the development of clean Internet materials and services by the lawful classification of web sites; and

Whereas, In October of this year, the United States Department of Commerce plans to set up a private not-for-profit corporation whose directors will create five new top-level domains that will register web sites by subject type; and

Whereas, A federal requirement that an adult-oriented domain site be created and that all adult-oriented web sites be registered to such domain would greatly aid Internet users, parents and teachers in shielding America's youth from the harms of pornography and adult-oriented materials and services that are available and proliferating on the Internet; and

Whereas, The states are somewhat limited in the regulation they can provide in this area because of the federal Commerce Clause; and

Whereas, Congress and the Executive Branch are the appropriate governmental branches to provide leadership in this area and may lawfully act to resolve quickly this issue in a responsible manner that comports with the ideals of the First Amendment; now, therefore, be it

Resolved by the Senate of the One-hundredth General Assembly of the State of Tennessee, the House of Representatives Concurring, That this Body hereby urges the United States Congress to establish and maintain a uniform resource locator system that contains a top-level domain for all Internet web sites providing pornographic or adult-oriented materials or services so as to facilitate and assist Internet users, services providers and software developers to manage the problem of uncontrolled access to obscenity, child pornography and other adult-oriented materials and services via Internet. Be it

Further Resolved, That this Body respectfully urges the President and Vice President of the United States and the Secretary of the Department of Commerce to use their offices and considerable influence to bring about the aims of this resolution by the means of executive order or department regulation, or the promotion of federal regulation, as they deem appropriate. Be it

Further Resolved, That the Clerk of the Senate deliver enrolled copies of this resolution to each member of the Tennessee delegation, to the United States Senate and the United States House of Representatives, to the Chairman of the United States Senate Commerce, Science and Transportation Committee and the United States House Commerce Committee, and to the President and Vice President of the United States and the Secretary of the United States Department of Commerce.

POM–486. A joint resolution adopted by the Legislature of the State of Tennessee; to the Committee on Finance.

HOUSE JOINT RESOLUTION NO. 525

Whereas, House Resolution No. 2912 of the 105th U.S. Congress was introduced in 1997 to reinstate payments under Medicare for home health services relating to venipuncture for the express purpose of obtaining blood samples; and

Whereas, the legislation also requires the Secretary of the Department of Health and Human Services to study potential fraud and abuse under the Medicare program with respect to such services; and

Whereas, the Department of Health and Human Services study calls for an examination of critical aspects of the Medicare program as it pertains to venipuncture services, along with the cost to beneficiaries if payment under the Medicare program is prohibited for such home health services; and

Whereas, the Department is also directed under the legislation to determine the costs to states through the potentially increased use of personal care services and nursing home placements as a result of Medicare not covering venipuncture procedures; and

Whereas, such services are vitally important in the diagnosis and treatment of many catastrophic illnesses, which if left undetected will result in increased future Medicare expenditures; and

Whereas, as citizens of this country continue to be unreasonably burdened by spiraling medical costs, the availability of adequate medical care is critical to their well-being; and it is incumbent upon the members of this Legislative Body to express our unflagging support for this significant legislation; now, therefore, be it

Resolved by the House of Representatives of the One-hundredth General Assembly of the State of Tennessee, the Senate Concurring, That this General Assembly hereby memorializes the U.S. Congress to act expeditiously to enact the Medicare Venipuncture Fairness Act. Be it

Further Resolved, That this General Assembly memorializes each member of the U.S. Congress from Tennessee to utilize the full measure of his or her influence to effect the enactment of the Medicare Venipuncture Fairness Act. Be it

Further Resolved, That the Chief Clerk of the House of Representatives is directed to transmit a certified copy of this resolution to the Honorable Bill Clinton, President of the United States; the President and the Secretary of the U.S. Senate; the Speaker and the Clerk of the U.S. House of Representatives; and to each member of the Tennessee delegation to the U.S. Congress.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. NICKLES:

S. 2187. A bill to amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. AKAKA, and Mr. STEVENS):

S. 2188. A bill to amend section 203(b) of the National Housing Act relating to the calculation of downpayments; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WYDEN (for himself and Mr. BURNS):

S. 2189. A bill to amend the Federal Water Pollution Control Act to authorize the use of State revolving loan funds for construction of water conservation and quality improvements; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself, Mr. DOMENICI, Mr. KERRY, and Mr. BINGAMAN):

S. 2190. A bill to authorize qualified organizations to provide technical assistance and capacity building services to microenterprise development organizations and programs and to disadvantaged entrepreneurs using funds from the Community Development Financial Institutions Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY:

S. 2191. A bill to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce, in order to carry out provisions of certain international conventions, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH:

S. 2192. A bill to make certain technical corrections to the Trademark Act of 1946; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2193. A bill to implement the provisions of the Trademark Law Treaty; 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. LEVIN (for himself and Mr. ABRAHAM):

S. Res. 251. A resolution to congratulate the Detroit Red Wings on winning the 1998 National Hockey League Stanley Cup Championship and proving themselves to be one of the best teams in NHL history; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES:

S. 2187. A bill to amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; to the Committee on Energy and Natural Resources.

THE ELECTRIC CONSUMER CHOICE ACT

Mr. NICKLES. Mr. President, I rise today to introduce the Electric Consumer Choice Act. For the last two years hearings and workshops have been held in both the House and Senate examining the issue of restructuring the electric industry. Many bills have been introduced on this issue by both Congressmen and Senators, some comprehensive and some dealing with more discreet issues such as repeal of the Public Utility Holding Company (PUHCA) or repeal of the Public Utility Regulatory Policies Act of 1978 (PURPA). The bill that I am introducing today cuts to the heart of the issue: do we or don't we support allowing consumers to choose their electric supplier? Do we or don't we support a national competitive market in electricity? I believe the answer to these questions is a resounding ''yes''! This Congress believes competition is good, that free markets work and that every American will benefit from a competitive electric industry.

The Electric Consumer Choice Act is intended to begin the process of achieving a national, competitive electricity market. It will establish consumer choice of electric suppliers as a goal this Congress firmly supports. It achieves this in a simple, straight-forward method. First, it eliminates electric monopolies by prohibiting the granting of exclusive rights to sell to electric utilities. Second, it prohibits undue discrimination against consumers purchasing electricity in interstate commerce. Third, it provides for access to local distribution facilities and finally, it allows a state to impose reciprocity requirements on out-of-state utilities. The bill also makes it clear that nothing in this act expands the authority of the Federal Energy Regulatory Commission (FERC) or limits the authority of a state to continue to regulate retail sales and distribution of electric energy in a manner consistent with the Commerce Clause of the United States Constitution.

The premise of this bill is that all attributes of today's electric energy market—generation, transmission, distribution and both wholesale and retail sales—are either in or affect interstate commerce. Therefore, any State regulation of these attributes that unduly discriminates against the interstate market for electric power violates the Commerce Clause unless such State action is protected by an act of Congress.

The Supreme Court has interpreted Part II of the Federal Power Act (FPA) as protecting State regulation of generation, local distribution, intrastate transmission and retail sales that unduly discriminates against the interstate market for electric power. The Court has reasoned that Congress, in the FPA, determined that the federal government needed only to regulate wholesale sales and interstate transmission in order to adequately protect interstate commerce in electric energy. Thus, all other aspects of the electric energy market were reserved to the States and protected from challenges under the Commerce Clause. The Electric Consumer Choice Act amends the FPA to eliminate the protection provided for State regulation that establishes, maintains, or enforces an exclusive right to sell electric energy or that unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce.

This bill provides consumers and electric energy suppliers with the means to achieve retail choice in all States by January 1, 2002. It does not impose a federal statutory mandate on the States. It does not preempt the States' traditional jurisdiction to regulate the aspects of the electric power market in the reserved realm—generation, local distribution, intrastate transmission, or retail sales—it merely limits the scope of what the States can do in that realm. It does not expand or extend FERC jurisdiction into the aspects of traditional State authority.

As I stated earlier, this bill is intended to provide every consumer a choice when it comes to electricity suppliers. It is intended to establish that this Congress supports national competition when it comes to the generation of electricity. It is intended to be the beginning, not the end of the process. There are many other issues that need to be addressed at the federal level to facilitate a national market for electricity. Some of these issues include repeal of PURPA and PUHCA, taxation differences between various electric providers, clarification of jurisdiction over transmission, ensuring reliability, providing for inclusion of Power Marketing Administrations and the Tennessee Valley Authority in a national market, and other issues that can only be addressed at the Federal level. These issues need to be addressed and should be addressed. But while these issues are being debated we should ensure that progress towards customer choice proceeds.

I am proud to say that my state of Oklahoma has been in the forefront of opening up it's electricity markets to competition. Seventeen other states have also moved to open their markets. It is my hope that the Electric Consumer Choice Act will facilitate this process nationally. To that end, I am introducing this bill today.

Mr. President, I ask unanimous consent that the Electric Consumer Choice Act be printed in the RECORD.

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

S. 2187

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the ''Electric Consumer Choice Act''.

SEC. 2. FINDINGS.

The Congress finds that—

(a) the opportunity for all consumers to purchase electric energy in interstate commerce from any supplier is essential to a dynamic, fully integrated and competitive national market for electric energy.

(b) the establishment, maintenance or enforcement of exclusive rights to sell electric energy and other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from any supplier constitute an unwarranted and unacceptable discrimination against and burden on interstate commerce;

(c) in today's technologically driven marketplace there is no justification for the discrimination against and burden imposed on interstate commerce by exclusive rights to sell electric energy or other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; and,

(d) the electric energy transmission and local distribution facilities of the nation's federally-owned, investor-owned and self-regulated utilities are essential facilities for the conduct of a competitive interstate retail market in electric energy in which all consumers have the opportunity to purchase electric energy in interstate commerce from any supplier.

SEC. 3. DECLARATION OF PURPOSE.

The purpose of this Act is to ensure that nothing in the Federal Power Act or any other federal law exempts or protects from Article I, Section 8, Clause 3 of the Constitution of the United States exclusive rights to sell electric energy or any other State actions which unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

SEC. 4. SCOPE OF STATE AUTHORITY UNDER THE FEDERAL POWER ACT.

Section 201 of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following:

''(h) Notwithstanding any other provision of this section, nothing in this Part or any other federal law shall be construed to authorize a State to—

''(1) establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy; or,

''(2) otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.''.

SEC. 5. ACCESS TO TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES.

No supplier of electric energy, who would otherwise have a right of access to a transmission or local distribution facility because such facility is an essential facility for the conduct of interstate commerce in electric energy, shall be denied access to such facility or precluded from engaging in the retail sale of electric energy on the grounds that such denial or preclusion is authorized or required by State action establishing, maintaining, or enforcing an exclusive right to sell, transmit, or locally distribute electric energy.

SEC. 6. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

Part II of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following:

''SEC. 215. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

''A State or state commission may prohibit an electric utility from selling electric energy to an ultimate consumer in such State if such electric utility or any of its affiliates owns or controls transmission or local distribution facilities and is not itself providing unbundled local distribution service in a State in which such electric utility owns or operates a facility used for the generation of electric energy.''.

SEC. 7. SAVINGS CLAUSE.

Nothing in this Act shall be construed to—

(a) authorize the Federal Energy Regulatory Commission to regulate retail sales or local distribution of electric energy or otherwise expand the jurisdiction of the Commission, or,

(b) limit the authority of a State to regulate retail sales and local distribution of electric energy in a manner consistent with Article I, Section 8, Clause 3 of the Constitution of the United States.

SEC. 8. EFFECTIVE DATES.

Section 5 and the amendment made by section 4 of this Act take effect on January 1, 2002. The amendment made by section 6 of this Act takes effect on the date of enactment of this Act.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. AKAKA, and Mr. STEVENS):

S. 2188. A bill to amend section 203(b) of the National Housing Act relating to the calculation of downpayments; to the Committee on Banking, Housing, and Urban Affairs.

FAMILY HOME OWNERS MORTGAGE EQUITY ACT

Mr. MURKOWSKI. Mr. President, today I, and my fellow Senator from the State of Alaska, Senator STEVENS, and my good friends and colleagues from the State of Hawaii, Senator INOUYE and Senator AKAKA, are introducing a very important measure—one that would unlock and open the door to many first-time home buyers.

As we are all aware, it is often the downpayment that is the largest impediment to home ownership for first-time home buyers. The Federal Housing Administration (FHA) began a pilot program two years ago to help families overcome that impediment by lowering the downpayment necessary for an FHA home mortgage.

Mr. President, I am pleased to say that the pilot program, which is located in Alaska and Hawaii, has reported great success.

This pilot program is effective because it accomplishes two feats: (1) it lowers the FHA downpayment, making it more affordable; and (2) it makes the FHA downpayment calculation easier and more understandable for all parties to the transaction. The pilot program, commonly called the ''97 percent Loan-to-Value Program,'' requires—on average—only a minimum cash investment of three percent for home buyers.

Our bill amends section 203(b) of the National Housing Act by changing the current multi-part formula to a single calculation formula. The simplified formula creates a lower, more affordable downpayment while simultaneously simplifying the current, cumbersome loan calculation formula. Our bill would extend this lower and simplified downpayment rate to perspective home buyers across the country.

Mr. President, the pilot program is a win-win situation: affordable homes are made available to responsible buyers without any increase in mortgage default rates. Here's what mortgage lenders have reported:

There is no indication of increase in risk. The loans we have made to date have been to borrowers with excellent credit records and stable employment, but not enough disposable income to accumulate the cash necessary for a high downpayment.—Richard E. Dolman, Manager, Seattle Mortgage, Anchorage Branch.

Is the 97% program working? The answer is a resounding YES! . . . In this current day, it takes two incomes to meet basic needs. To come up with a large downpayment is increasingly difficult, especially for those just starting out. The 3% program is a good start . . . I do no believe that lowering the downpayment increased our risk. . .— Nancy A. Karriowski, Alaska Home Mortgage, Inc., Anchorage, Alaska.

We have experienced nothing but positive benefits from the FHA Pilot Program Loan Calculation in Alaska and Hawaii.—Roger Aldrich, President, City Mortgage, Corporation, Anchorage, Alaska.

We support the new loan calculation, as this has provided a step toward the goal of homeownership for everyone . . . We do not feel that there is a greater risk with the borrower putting 3 percent down rather than using the calculation under the standard program . . .—Lorna Gleason, Vice President, National Bank of Alaska.

Home buyers under the pilot program agree. Vicki Case of Palmer, Alaska is a single parent and a mortgage lender who earned too much to qualify for any of the low-income mortgage programs. She would have been unable to purchase her home had it not been for an FHA loan with the reduced down payment.

In fact, but for the pilot program, approximately 70 percent of the FHA loan applications processed in Vicki Case's office would be rejected. simply because the buyer could not afford the downpayment. Mr. President, thanks to this pilot program, more and more deserving Alaskans are becoming home owners.

Mr. President, our legislation has the support of the Mortgage Bankers Association of America, the National Association of Realtors, the National Association of Home Builders and the U.S. Department of Housing and Urban Development. They believe, as I do, that borrowers in all states should benefit from the simplification of the FHA downpayment calculation.

I firmly believe that helping American families realize their dream of home ownership is vital to the Nation as a whole. Our bill, by creating a lower FHA downpayment, does much to assist families in owning their first home—thereby making the American dream of home ownership a reality.

Mr. President, for details on how the new calculation works in comparison to the current calculation, I ask unanimous consent to submit into the RECORD a downpayment calculation comparison sheet. And I ask that my colleagues join Senator STEVENS, Senator INOUYE, Senator AKAKA, and me in supporting this important legislation.

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

FHA DOWNPAYMENT COMPARISON SHEET—THE CURRENT MORTGAGE CALCULATION VERSUS THE ALASKA/HAWAII PILOT PROGRAM

A. The current FHA mortgage calculation requires numerous steps. They are as follows:

Step 1: Determine the acquisition cost by adding closing costs to sales price [many times the closing costs must be estimated; if they are and the estimate changes during processing, then the calculations must be redone.]

Step 2: Apply the loan formulation to acquisition cost: (a) 97% of the $25,000, (b) 95% of the amount between $25,001 and $125,000, and (c) 90% of the amount in excess of $125,000.

Step 3: Determine the maximum LTV by multiplying the appraised value [minus closing costs] by 97.75%. If the property is valued at $50,000 or less, then multiply by 98.75%.

Step 4: To determine the maximum FHA mortgage amount, take the lower amount from steps 2 and 3. The difference between the mortgage amount and the acquisition cost is the downpayment.

The simplified calculation currently utilized for FHA projects in Alaska and Hawaii is basic, common sense:

The downpayment is based on a percent of home's sale price. If a home is valued at $50,000 or less, the downpayment will equal 98.75 percent of the value of the home, subtracted from the total costs of the sale of the home (the value of the home plus closing costs). For homes that are valued at $50,000 to $125,000 the downpayment will equal 97.65 percent of the value of the home subtracted from the total cost of the sale of home. And for homes that are valued over $125,000, the downpayment will be 97.15 percent of the home subtracted from the total cost of the sale of the home.

For example: If a home sells for $98,000 and its closing costs are $2,000, the total acquisition cost of the home is 100,000. To calculate a downpayment, 97.65 percent of the cost of the 98,000 home (which equals $85.697) is subtracted from the total cost of the home—the sales price plus its closing costs. Therefore, the downpayment would be $4,303 ($100,000 − 95,697).

By Mr. WYDEN (for himself and Mr. BURNS):

S. 2189. A bill to amend the Federal Water Pollution Control Act to authorize the use of State revolving loan funds for construction of water conservation and quality improvements; to the Committee on Environment and Public Works.

WATER CONSERVATION AND QUALITY INCENTIVES ACT

• Mr. WYDEN. Mr. President, twenty-five years after enactment of the Clean Water Act, we still have not achieved the law's original goal that all our nation's lakes, rivers and streams would be safe for fishing and swimming.

After 25 years, it's time for the next generation of strategies to solve our remaining water quality problems. We need to give States new tools to overcome the new water quality challenges they are now facing.

The money that has been invested in controlling water pollution from factories and upgrading sewage treatment plants has gone a long way to controlling these urban pollution sources. In most cases, the remaining water quality problems are no longer caused by pollution spewing out of factory pipes. Instead, they are caused by runoff from a myriad of sources ranging from farm fields to city streets and parking lots.

In my home State of Oregon, more than half of our streams don't fully meet water quality standards. And the largest problems are contamination from runoff and meeting the standards for water temperature.

In many cases, conventional approaches will not solve these problems. But we can achieve water temperature standards and obtain other water quality benefits by enhancing stream flows and improving runoff controls.

A major problem for many streams in Oregon and in many other areas of the Western United States is that water supplies are fully appropriated or over-appropriated. There is currently no extra water to spare for increased stream flows.

We can't create a new water to fill the gap. But we can make more water available for this use through increased water conservation and more efficient use of existing water supplies.

The key to achieving this would be to create incentives to reduce wasteful water use.

In the Western United States, irrigated agriculture is the single largest user of water. Studies indicate that substantial quantities of water diverted for irrigation do not make it to the fields, with a significant portion lost to evaporation or leakage from irrigation canals.

In Oregon and other States that recognize rights to conserved water for those who conserve it, irrigators and other water users could gain rights to use conserved water while also increasing the amount of water available for other uses by implementing conservation and efficiency measures to reduce water loss.

The Federal government can play a role in helping meet our nation's changing water needs. In many Western States, water supply problems can be addressed by providing financial incentives to help water users implement cost effective water conservation and efficiency measures consistent with State water law.

And, we can improve water quality throughout the nation by giving greater flexibility to States to use Clean Water Act funds to control polluted runoff, if that's where the money is needed most.

Today, I am pleased to be joined by my colleague, Senator BURNS, in introducing legislation to authorize the Clean Water State Revolving Fund program to provide loans to water users to fund conservation measures or runoff controls. States would be authorized, but not required, to use their SRF funds for these purposes. Participation by water users, farmers, ranchers and other eligible loan recipients would also be entirely voluntary.

The conservation program would be structured to allow participating users to receive a share of the water saved through conservation or more efficient use, which they could use in accordance with State law. This type of approach would create a win/win situation with more water available for both the conservers and for instream flows. And, by using the SRF program, the Federal seed money would be repaid over time and gradually become available to fund conservation or other measures to solve water quality problems in other areas.

My proposal has the support of the Farm Bureau, Oregon water users, the Environmental Defense Fund and the Oregon Water Trust.

I urge my colleagues to support giving States greater flexibility to use their Clean Water funds for water conservation or runoff control when the State decides that is the best way to solve water quality problems and the water users voluntarily agree to participate.●

● Mr. BURNS. Mr. President, I am pleased today to join with my colleague from Oregon, Senator WYDEN, to introduce the Water Conservation and Quality Incentives Act, a bill to revise the state revolving fund in the Clean Water Act. This is language that Senator WYDEN and I have collaborated on to bring some sense of additional conservation of water resources to the many irrigation districts in the nation.

In the west, irrigators are by far the largest water users. These are folks who need the water because of the various crops that they have on the ground in the states out west. Unfortunately a large portion of the water that is used in irrigation is by nature displaced due to seepage within the canals and ditches in which the water flows. Although the water is not lost, since it seeps into the soil and assists in the overall soil moisture, it is not immediately available to the irrigator. However, it is water which could be more effectively used to provide additional water to the producer.

In most irrigation districts, irrigators pay for water that is released to them, and any displacement of this water does not help that producer on the bottom line. At a time when prices are low and markets are questionable, it is important that we give tools to the producer to make sure that they have every opportunity to stay in business.

A key underlying feature of the legislation, is that the water saved under the proposal in this bill will not only assist the producer in water and cost savings, but also will assist the future of water in the many rivers and streams in the west. At a time when the federal government seems to be taking steps to reduce state involvement in water rights this is extremely important.

The proposal put forth in this bill, will authorize the Clean Water State Revolving Fund to provide loans to irrigation districts to construct pipelines and develop additional conservation measures. The states would have an option in this measure, they would not have to involve their funds in this matter, but would allow them to do so if they so elected. In addition, those districts who did so elect to involve themselves would be able to add to their supply of water the difference between what they were using prior to the plan and what they were able to save.

This bill creates a win/win situation both for water users and for the multiple users of water in our states, particularly Oregon and Montana. We have an opportunity here to do something useful and worthwhile for the irrigators and the fishing, boating and those who use instream water. I would like to thank Senator WYDEN for his work on this measure and I am pleased to work with him today on this issue of great importance.●

By Mr. KENNEDY (for himself, Mr. DOMENICI, Mr. KERRY, and Mr. BINGAMAN):

S. 2190. A bill to authorize qualified organizations to provide technical assistance and capacity building services to microenterprise development organizations and programs and to disadvantaged entrepreneurs using funds from the Community Development Financial Institutions Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PROGRAM FOR INVESTMENT IN MICRO-ENTREPRENEURS (PRIME) ACT OF 1998

Mr. KENNEDY. Mr. President, it is a privilege to join Senator DOMENICI, Senator KERRY, and Senator BINGAMAN in introducing the ''The Program for Investment in Micro-Entrepreneurs'' Act—the PRIME Act. This legislation will encourage investment in micro-entrepreneurs by supporting the kinds of education and training needed to help build new small businesses.

Today, the nation's entrepreneurial spirit is thriving, fueled by the extraordinary economic growth and prosperity we currently enjoy. But new entrepreneurs still face challenges that limit their ability to turn innovative ideas into successful businesses and create new jobs. They deserve assistance in learning the basics to take their ideas to the next level—starting their own firms.

The ''PRIME'' Act is designed to help small entrepreneurs bridge the gap between worthwhile ideas and successful businesses. It will offer $105 million over the next five years to build business skills in key areas such as record-keeping, planning, management, marketing and computer technology.

The Clinton Administration strongly supports these initiatives. The Treasury Department's Community Development Financial Institutions Fund has become a lead agency for micro-enterprise activities across the country, and First Lady Hillary Rodham Clinton is one of their strongest advocates.

The PRIME Act will enhance all of these efforts. It will provide grants for micro-enterprise organizations across the country to assist disadvantaged and low-income entrepreneurs and provide them with essential training and education.

It will encourage the development of new micro-enterprise organizations, and expand existing ones to reach more micro-entrepreneurs.

It will sponsor research on the most innovative and successful ways of encouraging these new businesses and enabling them to succeed.

Under the Act, grants will be available each year to organizations that work with entrepreneurs. Local groups will leverage these funds with private and local resources to increase the impact of the federal seed money.

Massachusetts and New Mexico are leaders in this effort. The business community and local banks have made a significant investment in creating loan capital for micro-entrepreneurs to start their businesses.

By investing in micro-entrepreneurs, we will be harnessing the spirit and ideas of large numbers of Americans and creating new opportunities for self-sufficiency. We will be encouraging new small businesses that will strengthen the local economy in communities across the country. And that

result in turn will help to keep our national economy strong as well. I look forward to working closely with our colleagues in the Senate and the House to enact this important measure.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 2190

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROVISION OF TECHNICAL ASSISTANCE TO MICROENTERPRISES.

Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following new subtitle:

''Subtitle C—Microenterprise Technical Assistance and Capacity Building Program

''SEC. 171. SHORT TITLE.

''This subtitle may be cited as the 'Program for Investment in Microentrepreneurs Act of 1998', also referred to as the 'PRIME Act'.

''SEC. 172. DEFINITIONS.

''For purposes of this subtitle—

''(1) the term 'Administrator' has the same meaning as in section 103;

''(2) the term 'capacity building services' means services provided to an organization that is, or is in the process of becoming a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;

''(3) the term 'collaborative' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this subtitle;

''(4) the term 'disadvantaged entrepreneur' means a microentrepreneur that is—

''(A) a low-income person;

''(B) a very low-income person; or

''(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator;

''(5) the term 'Fund' has the same meaning as in section 103;

''(6) the term 'Indian tribe' has the same meaning as in section 103;

''(7) the term 'intermediary' means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 175;

''(8) the term 'low-income person' has the same meaning as in section 103;

''(9) the term 'microentrepreneur' means the owner or developer of a microenterprise;

''(10) the term 'microenterprise' means a sole proprietorship, partnership, or corporation that—

''(A) has fewer than 5 employees; and

''(B) generally lacks access to conventional loans, equity, or other banking services;

''(11) the term 'microenterprise development organization or program' means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs or prospective entrepreneurs;

''(12) the term 'training and technical assistance' means services and support provided to disadvantaged entrepreneurs or prospective entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services; and

''(13) the term 'very low-income person' means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section).

''SEC. 173. ESTABLISHMENT OF PROGRAM.

''The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Fund in the form of grants to qualified organizations in accordance with this subtitle.

''SEC. 174. USES OF ASSISTANCE.

''A qualified organization shall use grants made under this subtitle—

''(1) to provide training and technical assistance to disadvantaged entrepreneurs;

''(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

''(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

''(4) for such other activities as the Administrator determines are consistent with the purposes of this subtitle.

''SEC. 175. QUALIFIED ORGANIZATIONS.

''For purposes of eligibility for assistance under this subtitle, a qualified organization shall be—

''(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

''(2) an intermediary;

''(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

''(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

''SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.

''(a) ALLOCATION OF ASSISTANCE.—

''(1) IN GENERAL.—The Administrator shall allocate assistance from the Fund under this subtitle to ensure that—

''(A) activities described in section 174(1) are funded using not less than 75 percent of amounts made available for such assistance; and

''(B) activities described in section 174(2) are funded using not less than 15 percent of amounts made available for such assistance.

''(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single organization or entity may receive more than 10 percent of the total funds appropriated under this subtitle in a single fiscal year.

''(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under this subtitle are used to benefit very low-income persons, including those residing on Indian reservations.

''(c) SUBGRANTS AUTHORIZED.—

''(1) IN GENERAL.—A qualified organization receiving assistance under this subtitle may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

''(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this subtitle may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

''(d) DIVERSITY.—In making grants under this subtitle, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities and racially and ethnically diverse populations.

''SEC. 177. MATCHING REQUIREMENTS.

''(a) IN GENERAL.—Financial assistance under this subtitle shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Fund.

''(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in subsection (a).

''(c) EXCEPTION.—

''(1) IN GENERAL.—In the case of an applicant for assistance under this subtitle with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a).

''(2) LIMITATION.—Not more than 10 percent of the total funds made available from the Fund in any fiscal year to carry out this subtitle may be excepted from the matching requirements of subsection (a), as authorized by paragraph (1) of this subsection.

''SEC. 178. APPLICATIONS FOR ASSISTANCE.

''An application for assistance under this subtitle shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

''SEC. 179. RECORDKEEPING.

''The requirements of section 115 shall apply to a qualified organization receiving assistance from the Fund under this subtitle as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

''SEC. 180. AUTHORIZATION.

''In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title, there are authorized to be appropriated to the Fund to carry out this subtitle—

''(1) $15,000,000 for fiscal year 1999;

''(2) $25,000,000 for fiscal year 2000;

''(3) $30,000,000 for fiscal year 2001; and

''(4) $35,000,000 for fiscal year 2002.

''SEC. 181. IMPLEMENTATION.

''The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this subtitle.''.

SEC. 2. ADMINISTRATIVE EXPENSES.

Section 121(a)(2)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4718(a)(2)(A)) is amended—

(1) by striking ''$5,550,000'' and inserting ''$6,100,000''; and

(2) in the first sentence, by inserting before the period '', including costs and expenses associated with carrying out subtitle C''.

SEC. 3. CONFORMING AMENDMENTS.

Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703(d)) is amended—

(1) in paragraph (2)—

(A) by striking ''15'' and inserting ''17'';

(B) in subparagraph (G)—

(i) by striking ''9'' and inserting ''11'';

(ii) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(iii) by inserting after clause (iii) the following:

''(iv) 2 individuals who have expertise in microenterprises and microenterprise development;''; and

(2) in paragraph (4), in the first sentence, by inserting before the period ''and subtitle C''.

Mr. DOMENICI. Mr. President, it is a pleasure to join with Senator KENNEDY in support of the PRIME Act, ''Program for Investment in Micro-Entrepreneurs Act of 1998.''

Starting one's own business is a part of the American dream. There are thousands of creative and hardworking men and women who believe they have a solid idea for building a new business. The realities of beginning a business are that it takes more than luck, hard labor, and dedication to make it work. There are often overwhelming obstacles for would-be small and micro entrepreneurs, due in part of the complexity of local, state and federal laws, the necessity of understanding the intricacies of marketing, feasibility studies, and bookkeeping practices, as well as finding a source for capital. Entrepreneurs usually need basic assistance to bring their idea to a viable business enterprise. They need training, technical assistance, and mentoring.

Under this bill grants will be available through the Community Development Financial Institutions Fund, matched at least 50 percent in non-federal funds, to help experienced nonprofit organizations provide the assistance these new businesses so urgently require. Fifty percent of these grants will be awarded to applicants serving low-income clients, and those serving equally both urban and rural areas. From so many case studies and histories of successful businesses, we know that enthusiastic entrepreneurs can sustain and build their businesses when these organizations are available to provide critical training and professional, technical assistance.

I have had the pleasure of visiting countless new micro-level businesses in my State of New Mexico, a great majority of whom received assistance from the very competent WEEST Corp organization, now located in five different sites throughout our State. This organization not only provides key technical assistance and training and access to low interest revolving loans, but it also provides mentoring and information about sound business practices to ensure their creative ideas become viable business entities.

Micro and small businesses are an absolutely critical component of our national economic growth. The Small Business Administration, for example, lends excellent support to entrepreneurs. At the small time, the PRIME Act will establish a complimentary program by enabling intermediary organizations to serve a more micro-level entrepreneurs who need specialized and hands-on assistance. This is a good investment for the future, and will be returned many fold by the creation of businesses that can contribute to the growth of the family, local, and national economies.

There are many success stories we can all point to about the business that began with an idea and eventually grew into a major global corporation. It all began with the basic tenacity of a businessman, woman, or family. We have no way of knowing how many more such success stories will be told in the future. It is guaranteed, however, that there are thousands of such extraordinary entrepreneurs willing to provide the ideas and hard labor to make it happen, and with a little help, they will be successful.

Again, I am pleased to join Senator KENNEDY in cosponsoring the PRIME Act. Whatever we can do to assist who want to be self-reliant, successful entrepreneurs, with a piece of the American dream, is an investment well worth taking.

Mr. BINGAMAN. Mr. President, I rise today to offer my very enthusiastic support for the micro-enterprise bill being introduced by Senator KENNEDY. Programs of this type provide technical support and funding to thousands of potentially productive Americans who are struggling to make ends meet and are looking for a way out of their current precarious economic situation.

I have visited microenterprise businesses in my state and know they work. These individuals possess energy, ingenuity, desire, and vision but currently lack access to three important ingredients that will allow them to be successful in their entrepreneurial efforts: business management training, knowledge of the market, and affordable capital. This bill will provide all three ingredients, and will do so in areas of the country that need economic assistance.

Microenterprise is not charity and it does not foster dependence. Instead, it encourages individuals to use their specific strengths and creativity to support themselves and their community. It is a market-based approach to economic empowerment and self-reliance that has proven to be successful both here and overseas, and it deserves to be expanded. It offers an alternative to poverty and provides the means by which individuals and communities can be saved from cycles of isolation, violence, and despair.

In New Mexico, I have seen the tangible results of microenterprise programs. One organization we have interacted with, ACCION, provided funds for Michael and Jamie Ford to begin a very successful business selling flies for fly-fishing in their community and over the Internet. They were recently named the Small Business Administration's Welfare-to-Work Entrepreneur of the Year in New Mexico. Another organization, the New Mexico Business Resource Center, recommended that funds be provided through New Mexico Community Development Loan Fund to Kevin Bellinger, who created a unique art and dance program for disadvantaged youths called Harambe. Here, low-income individuals are taught to interact in non-violent and constructive ways and give back to the community in which they live. Mr. Bellinger was recently selected by New Mexico Newspaper as one of the top ten people in Santa Fe making a real difference in their community.

In Taos, the Taos County Economic Development Corporation providing funding for the Taos Food Center, a commercial kitchen that acts as an incubator for small-scale food producers and farmers in the region.

Previously, these individuals could not afford to rent space, buy commercial and office equipment, or market their products. With the assistance of microenterprise funds, the Taos Food Center provides the space and the equipment and provides on-site technical and business assistance. This allows individuals to rent the facility by the hour, and convert their crops into marketable products.

Other microenterprise organizations in New Mexico—the Rio Grande Community Development Corporation, La Jicarita Enterprise Community, WESST Corp., and so on—have had similarly stellar results. They play essential roles in their communities, and they should be commended for their efforts.

In April, I organized a roundtable discussion of all the microenterprise organizations operating in New Mexico. This was the first time representatives from these organizations met in the same location to discuss their respective philosophies, objectives, and strategies concerning microenterprise, and it was very beneficial to all of us. The dialogue with the organizations that began that day has continued to the present, and has only reinforced by commitment to these programs. The simple fact is: the work, and they work well.

The bill we are introducing today would accomplish several important tasks:

First, it will provide training, technical assistance, and start-up funds to potential entrepreneurs who are currently disadvantaged but eager to change their economic condition;

Second, it will provide training and capacity building services to microenterprise development organizations, an activity that will lead directly to the expansion of microenterprise funding and an increased number of clients being served;

Third, it will identify best practices in microenterprise technical and lending services, an activity that will further enhance efforts to provide funds to individuals in an efficient and effective manner;

Finally, it will ensure that microenterprise lending occurs in all areas that require assistance—meaning both rural and urban communities.

Let me conclude by thanking my colleague from Massachusetts and his staff for their work on this bill. I have been pleased to work with Senator KENNEDY on the development of the

components contained within the bill, in particular those related to rural communities and Indian reservations. I believe that this bill will have a profound effect on the ability of low-income individuals to establish businesses, develop new products and services, and create new jobs. All of these activities can only help individuals and communities in the United States in a positive way.

By Mr. LEAHY:

S. 2191. A bill to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce, in order to carry out provisions of certain international conventions, and for other purposes; to the Committee on the Judiciary.

MADRID PROTOCOL IMPLEMENTATION ACT

Mr. LEAHY. Mr. President, I am pleased to introduce legislation that will implement the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Protocol). This bill is part of my ongoing effort to refine American intellectual property law to ensure that it serves to advance and protect American interests and does not serve to encumber small companies seeking to expand into international markets. Specifically, this legislation will conform American trademark application procedures to the terms of the Protocol in anticipation of the U.S.'s eventual ratification of the treaty, thereby helping American businesses to create a ''one stop'' international trademark registration process. This bill is one of many measures I have introduced and supported over the past few years to ensure that American trademark holders receive strong protection in today's world of changing technology and complex international markets.

In addition to this legislation, I have introduced the Trademark Law Treaty Implementing and Registration Simplification Act, which will bring U.S. trademark law into conformance with the Trademark Law Treaty. The Trademark Law Treaty will simplify trademark registration requirements around the world by establishing a list of maximum requirements which Treaty member countries can impose on trademark applicants. All American businesses, and particularly small American businesses, will benefit as a result.

Earlier this year, I introduced legislation authorizing the National Research Council of the National Academy of Sciences to conduct a comprehensive study of the effects of adding new generic Top Level Domains on trademark and other intellectual property rights.

Moreover, I supported the Federal Trademark Dilution Act of 1995, which was passed last Congress, to provide intellectual property rights holders with the power to enjoin another person's commercial use of famous marks that would cause dilution of the mark's distinctive quality.

Together, these measures represent major steps in our efforts to refine American trademark law to ensure that it serves to promote American interests.

Currently, in order for American companies to protect their trademarks abroad, they must register their trademarks in each and every country in which protection is sought. Registering in multiple countries is a time-consuming, complicated and expensive process—a process which places a disproportionate burden on smaller American companies seeking international trademark protection. This legislation will ease the registration burden by enabling American businesses to obtain trademark protection in all signatory countries with a single trademark application filed with the Patent and Trademark Office.

Since 1891, the Madrid Agreement Concerning the International Registration of Marks (Agreement) has provided an international trademark registration system. However, prior to adoption of the Protocol, the U.S. declined to join the Agreement because it contained terms deemed inimical to American intellectual property interests. In 1989, the terms of the Agreement were modified by the Protocol, which corrected the objectionable terms of the Agreement and made American participation a possibility. For example, under the Protocol, applications for international trademark extension can be completed in English; formerly, applications were required to be completed in French. It should be noted that the Protocol will not require substantive changes to American trademark law, hence the implementing legislation I introduce today is identical to the legislation that passed the House on May 5, 1998 and only would make those technical changes to American law necessary to bring the U.S. into conformity with the Protocol.

To date, the Administration has resisted accession to the treaty because of voting rights disputes with the European Union, which has sought to retain an additional vote for itself as an intergovernmental entity, in addition to the votes of its member states. I support the Administration's efforts to negotiate a treaty based upon the equitable and democratic principle of one-state, one-vote. However, in anticipation of the eventual resolution of this dispute, the Senate has the opportunity to act now to make the technical changes to American trademark law so that once this voting dispute is satisfactorily resolved and the U.S. accedes to the Protocol, ''one-stop'' international trademark registration can become an immediate reality for all American trademark applicants.

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. 2191

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 ''Madrid Protocol Implementation Act''.

SEC. 2. PROVISIONS TO IMPLEMENT THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS.

The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C. 1051 and following) (commonly referred to as the ''Trademark Act of 1946'') is amended by adding after section 51 the following new title:

''TITLE XII—THE MADRID PROTOCOL

''SEC. 60. DEFINITIONS.

''For purposes of this title:

''(1) MADRID PROTOCOL.—The term 'Madrid Protocol' means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

''(2) BASIC APPLICATION.—The term 'basic application' means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

''(3) BASIC REGISTRATION.—The term 'basic registration' means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

''(4) CONTRACTING PARTY.—The term 'Contracting Party' means any country or intergovernmental organization that is a party to the Madrid Protocol.

''(5) DATE OF RECORDAL.—The term 'date of recordal' means the date on which a request for extension of protection that is filed after an international registration is granted is recorded on the International Register.

''(6) DECLARATION OF BONA FIDE INTENTION TO USE THE MARK IN COMMERCE.—The term 'declaration of bona fide intention to use the mark in commerce' means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

''(A) the applicant or holder has a bona fide intention to use the mark in commerce,

''(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce, and

''(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, or to cause mistake, or to deceive.

''(7) EXTENSION OF PROTECTION.—The term 'extension of protection' means the protection resulting from an international registration that extends to a Contracting Party at the request of the holder of the international registration, in accordance with the Madrid Protocol.

''(8) HOLDER OF AN INTERNATIONAL REGISTRATION.—A 'holder' of an international registration is the natural or juristic person

in whose name the international registration is recorded on the International Register.

''(9) INTERNATIONAL APPLICATION.—The term 'international application' means an application for international registration that is filed under the Madrid Protocol.

''(10) INTERNATIONAL BUREAU.—The term 'International Bureau' means the International Bureau of the World Intellectual Property Organization.

''(11) INTERNATIONAL REGISTER.—The term 'International Register' means the official collection of such data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded, regardless of the medium which contains such data.

''(12) INTERNATIONAL REGISTRATION.—The term 'international registration' means the registration of a mark granted under the Madrid Protocol.

''(13) INTERNATIONAL REGISTRATION DATE.—The term 'international registration date' means the date assigned to the international registration by the International Bureau.

''(14) NOTIFICATION OF REFUSAL.—The term 'notification of refusal' means the notice sent by an Office of a Contracting Party to the International Bureau declaring that an extension of protection cannot be granted.

''(15) OFFICE OF A CONTRACTING PARTY.—The term 'Office of a Contracting Party' means—

''(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks, or

''(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

''(16) OFFICE OF ORIGIN.—The term 'office of origin' means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

''(17) OPPOSITION PERIOD.—The term 'opposition period' means the time allowed for filing an opposition in the Patent and Trademark Office, including any extension of time granted under section 13.

''SEC. 61. INTERNATIONAL APPLICATIONS BASED ON UNITED STATES APPLICATIONS OR REGISTRATIONS.

''The owner of a basic application pending before the Patent and Trademark Office, or the owner of a basic registration granted by the Patent and Trademark Office, who—

''(1) is a national of the United States,

''(2) is domiciled in the United States, or

''(3) has a real and effective industrial or commercial establishment in the United States,

may file an international application by submitting to the Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Commissioner.

''SEC. 62. CERTIFICATION OF THE INTERNATIONAL APPLICATION.

''Upon the filing of an application for international registration and payment of the prescribed fees, the Commissioner shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification. Upon examination and certification of the international application, the Commissioner shall transmit the international application to the International Bureau.

''SEC. 63. RESTRICTION, ABANDONMENT, CANCELLATION, OR EXPIRATION OF A BASIC APPLICATION OR BASIC REGISTRATION.

''With respect to an international application transmitted to the International Bureau under section 62, the Commissioner shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

''(1) within 5 years after the international registration date; or

''(2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.

''SEC. 64. REQUEST FOR EXTENSION OF PROTECTION SUBSEQUENT TO INTERNATIONAL REGISTRATION.

''The holder of an international registration that is based upon a basic application filed with the Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of its international registration by filing such a request—

''(1) directly with the International Bureau, or

''(2) with the Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Commissioner.

''SEC. 65. EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES UNDER THE MADRID PROTOCOL.

''(a) IN GENERAL.—Subject to the provisions of section 68, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

''(b) IF UNITED STATES IS OFFICE OF ORIGIN.—An extension of protection resulting from an international registration of a mark shall not apply to the United States if the Patent and Trademark Office is the office of origin with respect to that mark.

''SEC. 66. EFFECT OF FILING A REQUEST FOR EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES.

''(a) REQUIREMENT FOR REQUEST FOR EXTENSION OF PROTECTION.—A request for extension of protection of an international registration to the United States that the International Bureau transmits to the Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

''(b) EFFECT OF PROPER FILING.—Unless extension of protection is refused under section 68, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 7(c), as of the earliest of the following:

''(1) The international registration date, if the request for extension of protection was filed in the international application.

''(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.

''(3) The date of priority claimed pursuant to section 67.

''SEC. 67. RIGHT OF PRIORITY FOR REQUEST FOR EXTENSION OF PROTECTION TO THE UNITED STATES.

''The holder of an international registration with an extension of protection to the United States shall be entitled to claim a date of priority based on the right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

''(1) the international registration contained a claim of such priority; and

''(2)(A) the international application contained a request for extension of protection to the United States, or

''(B) the date of recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention).

''SEC. 68. EXAMINATION OF AND OPPOSITION TO REQUEST FOR EXTENSION OF PROTECTION; NOTIFICATION OF REFUSAL.

''(a) EXAMINATION AND OPPOSITION.—(1) A request for extension of protection described in section 66(a) shall be examined as an application for registration on the Principal Register under this Act, and if on such examination it appears that the applicant is entitled to extension of protection under this title, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office.

''(2) Subject to the provisions of subsection (c), a request for extension of protection under this title shall be subject to opposition under section 13. Unless successfully opposed, the request for extension of protection shall not be refused.

''(3) Extension of protection shall not be refused under this section on the ground that the mark has not been used in commerce.

''(4) Extension of protection shall be refused under this section to any mark not registrable on the Principal Register.

''(b) NOTIFICATION OF REFUSAL.—If, a request for extension of protection is refused under subsection (a), the Commissioner shall declare in a notification of refusal (as provided in subsection (c)) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.

''(c) NOTICE TO INTERNATIONAL BUREAU.—(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for extension of protection, the Commissioner shall transmit to the International Bureau any of the following that applies to such request:

''(A) A notification of refusal based on an examination of the request for extension of protection.

''(B) A notification of refusal based on the filing of an opposition to the request.

''(C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.

''(2) If the Commissioner has sent a notification of the possibility of opposition under paragraph (1)(C), the Commissioner shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.

''(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set

forth in such notification may be transmitted to the International Bureau by the Commissioner after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.

''(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the request for extension of protection shall not be refused and the Commissioner shall issue a certificate of extension of protection pursuant to the request.

''(d) DESIGNATION OF AGENT FOR SERVICE OF PROCESS.—In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark shall designate, by a written document filed in the Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

''SEC. 69. EFFECT OF EXTENSION OF PROTECTION.

''(a) ISSUANCE OF EXTENSION OF PROTECTION.—Unless a request for extension of protection is refused under section 68, the Commissioner shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the Patent and Trademark Office.

''(b) EFFECT OF EXTENSION OF PROTECTION.—From the date on which a certificate of extension of protection is issued under subsection (a)—

''(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register, and

''(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

''SEC. 70. DEPENDENCE OF EXTENSION OF PROTECTION TO THE UNITED STATES ON THE UNDERLYING INTERNATIONAL REGISTRATION.

''(a) EFFECT OF CANCELLATION OF INTERNATIONAL REGISTRATION.—If the International Bureau notifies the Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Commissioner shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

''(b) EFFECT OF FAILURE TO RENEW INTERNATIONAL REGISTRATION.—If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

''(c) TRANSFORMATION OF AN EXTENSION OF PROTECTION INTO A UNITED STATES APPLICATION.—The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under Article 6(4) of the Madrid Protocol, may file an application, under section 1 or 44 of this Act, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 67 of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this Act which apply to any application filed pursuant to section 1 or 44.

''SEC. 71. AFFIDAVITS AND FEES.

''(a) REQUIRED AFFIDAVITS AND FEES.—An extension of protection for which a certificate of extension of protection has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Commissioner—

''(1) at the end of the 6-year period beginning on the date on which the certificate of extension of protection was issued by the Commissioner, unless within the 1-year period preceding the expiration of that 6-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Commissioner; and

''(2) at the end of the 10-year period beginning on the date on which the certificate of extension of protection was issued by the Commissioner, and at the end of each 10-year period thereafter, unless—

''(A) within the 6-month period preceding the expiration of such 10-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Commissioner; or

''(B) within 3 months after the expiration of such 10-year period, the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with the fee described in subparagraph (A) and an additional fee prescribed by the Commissioner.

''(b) CONTENTS OF AFFIDAVIT.—The affidavit referred to in subsection (a) shall set forth those goods or services recited in the extension of protection on or in connection with which the mark is in use in commerce and the holder of the international registration shall attach to the affidavit a specimen or facsimile showing the current use of the mark in commerce, or shall set forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

''SEC. 72. ASSIGNMENT OF AN EXTENSION OF PROTECTION.

''An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.

''SEC. 73. INCONTESTABILITY.

''The period of continuous use prescribed under section 15 for a mark covered by an extension of protection issued under this title may begin no earlier than the date on which the Commissioner issues the certificate of the extension of protection under section 69, except as provided in section 74.

''SEC. 74. RIGHTS OF EXTENSION OF PROTECTION.

''An extension of protection shall convey the same rights as an existing registration for the same mark, if—

''(1) the extension of protection and the existing registration are owned by the same person;

''(2) the goods and services listed in the existing registration are also listed in the extension of protection; and

''(3) the certificate of extension of protection is issued after the date of the existing registration.''.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date on which the Madrid Protocol (as defined in section 60(1) of the Trademark Act of 1946) enters into force with respect to the United States.

By Mr. HATCH:

S. 2192. A bill to make certain technical corrections to the Trademark Act of 1946; to the Committee on the Judiciary.

TECHNICAL CORRECTIONS TO THE TRADEMARK ACT OF 1946

Mr. HATCH. Mr. President, I rise today to introduce some housekeeping amendments to the Trademark Act. This bill makes a number of technical corrections to the Trademark Act which will clean up the code and make explicit some of the current practices of the Patent and Trademark Office with respect to the trademark protection of matter that is wholly functional.

I take it as my duty as Chairman of the Committee on the Judiciary to try to ensure that the U.S. Code is clear, useful, and up-to-date. These housekeeping amendments will help clarify the law in useful ways, and I hope my colleagues will support this bill.

For the reference of my colleagues, I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2192

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL CORRECTIONS TO TRADEMARK ACT OF 1946.

(a) IN GENERAL.—The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946), is amended as follows:

(1) Section 1 (15 U.S.C. 1051) is amended—

(A) in subsection (a)(1)(A), by striking ''goods in connection'' each place it appears and inserting ''goods on or in connection''; and

(B) in subsection (d)(1)—

(i) by inserting ''and,'' after ''specifying the date of the applicant's first use of the mark in commerce''; and

(ii) by striking ''and, the mode or manner in which the mark is used on or in connection with such goods or services''.

(2) Section 2 (15 U.S.C. 1052) is amended—

(A) in subsection (e)—

(i) in paragraph (3) by striking ''or'' after ''them,''; and

(ii) by inserting before the period at the end the following: '', or (5) comprises any matter that, as a whole, is functional''; and

(B) in subsection (f), by striking ''paragraphs (a), (b), (c), (d), and (e)(3)'' and inserting ''subsections (a), (b), (c), (d), (e)(3), and (e)(5)''.

(3) Section 7(a) (15 U.S.C. 1057(a)) is amended in the first sentence by striking the second period at the end.

(4) Section 10 (15 U.S.C. 1060) is amended—

(A) at the end of the first sentence, by striking the comma before the period; and

(B) in the third sentence, by striking the second period at the end.

(5) Section 14(3) (15 U.S.C. 1064(3)) is amended by inserting ''or is functional,'' before ''or has been abandoned''.

(6) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking ''or device'' and inserting '', device, any matter that as a whole is not functional,''.

(7) Section 26 (15 U.S.C. 1094) is amended by striking ''7(c),,'' and inserting '', 7(c),''.

(8) Section 31 (15 U.S.C. 1113) is amended—

(A) by striking—

''§ 31. Fees'';

and

(B) by striking ''(a)'' and inserting ''SEC. 31. (a)''.

(9) Section 32(1) (15 U.S.C. 1114(1)) is amended by striking ''As used in this subsection'' and inserting ''As used in this paragraph''.

(10) Section 33(b) (15 U.S.C. 1115(b)) is amended—

(A) by redesignating paragraph (8) as paragraph (9); and

(B) by inserting after paragraph (7) the following:

''(8) That the mark is functional; or''.

(11) Section 39(a) (15 U.S.C. 1121(a)) is amended by striking ''circuit courts'' and inserting ''courts''.

(12) Section 42 (15 U.S.C. 1124) is amended by striking ''the any domestic'' and inserting ''any domestic''.

(13) The Act is amended by striking ''trademark'' each place it appears in the text and the title and inserting ''trademark''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark.

SECTION-BY-SECTION ANALYSIS

SECTION 1. TECHNICAL CORRECTIONS TO THE TRADEMARK ACT OF 1946

Section 1(a) provides that the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provision of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C. 1051 et seq.) shall be referred to as the ''Trademark Act of 1946'' and will be amended by the following provisions.

Subparagraph 1(a)(1)(A) amends subparagraph 1(a)(1)(A) of the Trademark Act to change the phrase ''goods in connection'' to ''goods on or in connection''. This amendment simply adds language to clarify that a trademark or service mark may be used on or in connection with goods or services rather than just directly on the goods. This language is fully consistent with case law and Patent and Trademark Office (''Office'') practice and is not a substantive change.

Subparagraph 1(a)(1)(B)(i) amends subsection 1(d)(1) of the Trademark Act by inserting ''and'' after the words ''specifying the date of the applicant's first use of the mark in commerce,''.

Subparagraph 1(a)(1)(B)(ii) amends subsection 1(d)(1) of the Trademark Act by deleting ''and the mode or manner in which the mark is used on or in connection with such goods or services''. Section 1(d)(1) sets out the requirements for a complete ''statement of use'', the document that must be filed to complete any published trademark application that was originally filed based on intent-to-use the mark. The statement of use is meant to bring the intent-to-use based application into conformity with the requirements for a trademark application based on use in commerce. The deletion of this language makes this section parallel to section 1(a)(1)(A), as amended by the Trademark Law Treaty Implementation Act. Section 1(a)(1)(A), as amended, sets out the requirements for filing a complete trademark application based on use in commerce. Thus the amendment conforms the requirements of these two sections, requirements that should logically be identical. In addition, the experience of the Office has been that requiring the applicant to state the mode or manner of using the mark adds no additional useful information to the application inasmuch as an applicant is already required to submit specimens, e.g., tags, labels, advertising etc., to demonstrate how it is using the mark. Therefore, an additional statement concerning the mode or manner of use of the mark is unnecessary.

Subparagraph 1(a)(2)(A) amends paragraph 2(e) of the Trademark Act by adding a new subparagraph 5, ''any matter that, as a whole, is functional'', to the list of statutory refusals set out in that paragraph. The language clarifies that matter which is wholly functional must be refused registration, a position that is completely consistent with the intent of the Trademark Act. This change codifies both the case law in this matter and the long-standing practice of the Office to refuse registration to matter that is wholly functional based on a combined reading of sections 1, 2 and 45 of the Trademark Act. This new section will provide examining attorneys with a simple reference for the functionality refusal.

Subparagraph 1(a)(2)(B) amends paragraph 2(f) of the Trademark Act to add a reference to the new statutory refusal set out in subparagraph 2(e)(5). This amendment to paragraph 2(f) of the Trademark Act provides that matter which is wholly functional may not be registered upon a showing that the matter has become distinctive. This change codifies existing case law and the current practice of the Office and is not a change in the substantive law.

Paragraph 1(a)(3) amends section 7(a) of the Trademark Act by deleting an extraneous period.

Paragraph 1(a)(4) amends section 10 of the Trademark Act by deleting extraneous punctuation.

Paragraph 1(a)(5) amends paragraph 14(3) of the Trademark Act by inserting the phrase ''or is functional,'' before ''or has been abandoned''. This amendment adds an additional ground for canceling a registration more than five years after the date of registration. This amendment changes existing case law in this matter but is fully consistent with the purpose of the Trademark Act. To exempt the registration of a wholly functional design from being subject to cancellation five years after the registration has issued permits the trademark owner with such a registration to obtain patent-like protection for its wholly functional design without the limited term that the patent law imposes. This change is therefore wholly consistent with both the purpose of the Trademark Act and the codifications of current practice regarding functionality made in this Act.

Paragraph 1(a)(6) amends section 23(c) of the Trademark Act by adding ''any matter that as a whole is not functional'' to the listing of the types of marks which can be registered on the Supplemental register. This change codifies existing case law and the current practice of the Office.

Paragraph 1(a)(7) amends section 26 of the Trademark Act by deleting an extraneous comma.

Paragraph 1(a)(8) amends section 31 of the Trademark Act by deleting ''§31 Fees'' from the title of the section and inserting ''Sec. 31. (a)''.

Paragraph 1(a)(9) amends section 32(1) of the Trademark Act to clarify that the definition of ''any person'' as set out in paragraph 1 of section 32 is limited to the matter within the paragraph.

Paragraph 1(a)(10) amends section 33(b) of the Trademark Act by inserting as a new paragraph 8, ''That the mark is functional; or''. This language adds a new defense against a claim of infringement made by the owner of a mark which has become ''incontestable'' under the provisions of section 32 of the Trademark Act. This language is fully consistent with the amendment made to paragraph 14(3) of the Trademark Act by paragraph 1(a)(5) of this Act.

Paragraph 1(a)(11) amends section 39(a) of the Trademark Act to strike a reference, that is no longer relevant, to ''circuit courts'' and insert the word ''courts''.

Paragraph 1(a)(12) amends Section 42 of the Trademark Act by sdeleting an extraneous ''the''.

Paragraph 1(a)(13) amends the Act to strike ''trade-mark'' in each place it occurs and replace it with ''trademark''. This is the more modern spelling.

Section 1(b) establishes an effective date that is prospective with respect to both civil actions and proceedings at the U.S. Patent and Trademark Office.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2193. A bill to implement the provisions of the Trademark Law Treaty; to the Committee on the Judiciary.

TRADEMARK LAW TREATY IMPLEMENTATION ACT

Mr. HATCH. Mr. President, I rise to introduce the Trademark Law Treaty Implementation Act of 1998. This legislation makes necessary changes in our domestic trademark law and procedures to ensure that we are in compliance when we ratify the treaty, which appears more likely this year than previously. The Trademark Law Treaty was done and signed at Geneva in October of 1994, and entered into force in 1996.

The obligations under the Trademark Law Treaty legislation will require some relatively minor changes to U.S. trademark practice, but will bring significant improvements in the trademark practices of a number of important countries around the world in which U.S. trademark owners seek protection. The required changes will eliminate complexities and simplify the process of obtaining, renewing, and managing trademark assets for American firms marketing their products and services around the world.

Countries around the world have a number of varying requirements for filing trademark applications, effecting changes of ownership of trademark registrations, and other procedures associated with managing trademark assets. These differences cause considerable

aggravation and expense to trademark owners seeking to protect their marks around the world. Many of these procedures and requirements imposed by foreign countries are non-substantive and highly technical. In addition, many of these requirements in the various procedures of foreign trademark offices impose very significant cost burdens, both in official fees to be paid to local trademark offices, as well as agent's fees for fulfilling the various requirements. For example, many countries require that signatures on applications for powers of attorney be notarized, authenticated, and legalized. This very expensive and time consuming procedure is prohibited under the Treaty in all cases except where the registrant is surrendering a registration.

The Treaty eliminates these conflicting and expensive practices by setting forth a list of maximum requirements which a member State can impose for various actions. Specifically, the Treaty sets forth maximum requirements for: the contents of a trademark application; the content of a power of attorney; the elements necessary for an application to receive a filing date; a request to record a change in the name or address of a trademark owner; and, a request to renew a trademark registration. These requirements are implemented through the adoption of model forms for trademark applicants and owners to use which must be accepted by every member State. While a member need not impose all of the requirements or elements listed, it cannot demand the inclusion of any additional requirements or elements in respect of a particular action.

There are several other guarantees mandated by the Treaty that will benefit trademark applicants and owners. Under the Treaty, countries will have to register and protect service marks, as well as goods marks, an important consideration to the U.S. service economy, which has many valuable service marks, such as Marriott and American Airlines. Applicants will be able to file for protection under multiple classifications for goods and services, which will mature into multiple class registrations. No longer will trademark owners be forced to make a separate filing for each power of attorney; one general power will suffice. Member countries are precluded from considering goods or services as being similar to each other simply on the ground that they appear in the same class of the NICE classification. Moreover, a request to change the name or address of a trademark owner or a request to correct a mistake in a trademark registration may not be refused without giving the trademark owner an opportunity to comment.

As I indicated, the Trademark Law Treaty Implementation Act of 1998 makes only minor changes in our domestic trademark law. These changes include: the elimination of the requirement for a statement of the manner in which a mark is used or intended to be used in connection with the goods or services identified in the application; the elimination of the requirement that the applicant verify an application; the adoption of a grace period of at least six months for the filing of a renewal application; the elimination of a declaration or evidence concerning the use of a mark in connection with the filing of a renewal application; and, the elimination of a requirement to file a copy of the actual assignment document as a condition for recording the assignment of a trademark registration.

This bill will also harmonize and simplify the procedural requirements under the Trademark Act of 1946. Sections 8 and 9 will be amended to establish a similar period of one year prior to the end of the applicable time period, along with a grace period of six months after that period, for filing both affidavits of use and renewal applications. While it separates the ten-year affidavit of use from the renewal application, as required by the Treaty, the bill permits them both to be filed during the same time period which will benefit trademark applicants.

The Trademark Law Treaty Implementation Act of 1998 will help American companies protect their trademark assets in markets around the world thereby facilitating their ability to compete. At the same time, the changes it makes in U.S. trademark law are made in a manner that will assist American trademark owners protect their marks in this country.

Mr. President, I hope my colleagues will support this legislation which is so important to American trademark owners.

I ask unanimous consent that the text of the bill and an explanatory section by section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2193

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 ''Trademark Law Treaty Implementation Act''.

SEC. 2. REFERENCE TO THE TRADEMARK ACT OF 1946.

For purposes of this Act, the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the ''Trademark Act of 1946''.

SEC. 3. APPLICATION FOR REGISTRATION; VERIFICATION.

(a) APPLICATION FOR USE OF TRADEMARK.—Section 1(a) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) is amended to read as follows:

''SECTION 1. (a)(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner, and such number of specimens or facsimiles of the mark as used as may be required by the Commissioner.

''(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

''(3) The statement shall be verified by the applicant and specify that—

''(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

''(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

''(C) the mark is in use in commerce; and

''(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

''(i) state exceptions to the claim of exclusive use; and

''(ii) shall specify, to the extent of the verifier's knowledge—

''(I) any concurrent use by others;

''(II) the goods on or in connection with which and the areas in which each concurrent use exists;

''(III) the periods of each use; and

''(IV) the goods and area for which the applicant desires registration.

''(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.''.

(b) APPLICATION FOR BONA FIDE INTENTION TO USE TRADEMARK.—Subsection (b) of section 1 of the Trademark Act of 1946 (15 U.S.C. 1051(b)) is amended to read as follows:

''(b)(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner.

''(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

''(3) The statement shall be verified by the applicant and specify—

''(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

''(B) the applicant's bona fide intention to use the mark in commerce;

''(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

''(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 44, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

''(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.''.

(c) CONSEQUENCE OF DELAYS.—Paragraph (4) of section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)(4)) is amended to read as follows:

''(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.''.

SEC. 4. REVIVAL OF ABANDONED APPLICATION.

Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) is amended in the last sentence by striking ''unavoidable'' and by inserting ''unintentional''.

SEC. 5. DURATION OF REGISTRATION; CANCELLATION; AFFIDAVIT OF CONTINUED USE; NOTICE OF COMMISSIONER'S ACTION.

Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) is amended to read as follows:

''DURATION

''SEC. 8. (a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Commissioner for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

''(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

''(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

''(3) For all registrations, at the end of each successive 10-year period following the date of registration.

''(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office—

''(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Commissioner; or

''(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

''(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

''(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

''(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

''(e) The Commissioner shall notify any owner who files 1 of the affidavits required by this section of the Commissioner's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

''(f) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 6. RENEWAL OF REGISTRATION.

Section 9 of the Trademark Act of 1946 (15 U.S.C. 1059) is amended to read as follows:

''RENEWAL OF REGISTRATION

''SEC. 9. (a) Subject to the provisions of section 8, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Commissioner. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

''(b) If the Commissioner refuses to renew the registration, the Commissioner shall notify the registrant of the Commissioner's refusal and the reasons therefor.

''(c) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 7. RECORDING ASSIGNMENT OF MARK.

Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended to read as follows:

''ASSIGNMENT

''SEC. 10. (a) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the Patent and Trademark Office, the record shall be prima facie evidence of execution. An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the Patent and Trademark Office within 3 months after the date of the subsequent purchase or prior to the subsequent purchase. The Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Commissioner.

''(b) An assignee not domiciled in the United States shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 8. INTERNATIONAL CONVENTIONS; COPY OF FOREIGN REGISTRATION.

Section 44 of the Trademark Act of 1946 (15 U.S.C. 1126) is amended—

(1) in subsection (d)—

(A) by striking ''23, or 44(e) of this Act'' and inserting ''or 23 of this Act or under subsection (e) of this section''; and

(B) in paragraphs (3) and (4) by striking ''this subsection (d)'' and inserting ''this subsection''; and

(2) in subsection (e), by striking the second sentence and inserting the following: ''Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant.''.

SEC. 9. TRANSITION PROVISIONS.

(a) REGISTRATIONS IN 20-YEAR TERM.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 5 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act.

(b) APPLICATIONS FOR REGISTRATION.—This Act and the amendments made by this Act shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act.

(c) AFFIDAVITS.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 5 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946, for which the affidavit is filed is on or after the effective date of this Act.

(d) RENEWAL APPLICATIONS.—The amendment made by section 6 shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act.

SEC. 10. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect—

(1) on the date that is 1 year after the date of the enactment of this Act, or

(2) upon the entry into force of the Trademark Law Treaty with respect to the United States,

whichever occurs first.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides a short title: ''Trademark Law Treaty Implementation Act.''

SECTION 2. REFERENCE TO THE TRADEMARK ACT OF 1946

This section provides that the Act entitle ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provision of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C 1051 et. seq.) shall be referred to as the ''Trademark Act of 1946''.

SECTION 3. APPLICATION FOR REGISTRATION; VERIFICATION

Summary of Section 3

This section amends subsections 1(a) (Application for Use) and 1(b) (Application for Intent to Use) of the Trademark Act of 1946 (15 U.S.C. 1051(a) and 1051(b)) to create a clear distinction between the written application, the form of which may be prescribed by the Commissioner, and the declaration pertaining to applicant's use or intention to use the mark, the substance of which is detailed in the respective subsections; to require that the declaration pertaining to use or intention to use be verified by the applicant; to authorize the Commissioner to promulgate rules prescribing both the elements of the application, in addition to those specified in the proposed provision, and those elements necessary for a filing date; to omit the requirement in the written application for a statement of the ''mode or manner'' in which the mark is used or intended to be used in connection with the specified goods or services; and to clarify and modernize the language of the subsections, as appropriate. In addition, an amendment is made to subsection 1(d) (15 U.S.C. 1051(d)) to clarify that an application may be revived after a notice of allowance is issued.

Applications under the Trademark Law Treaty and Existing U.S. Law

With the goal of simplifying and harmonizing the registration process worldwide, Article 3(1) of the Trademark Law Treaty (''Treaty'' or ''TLT'') establishes a comprehensive list of indications or elements that may be required in an application to register a trademark or service mark (''mark''). This list permits a Contracting Party to the Treaty (''Party'') to require, inter alia, a signature and declarations of use and intention to use a mark. The list does not permit a Party to require, inter alia, a statement of the mode or manner in which the mark is used, or intended to be used, in connection with the goods or services specified in the application. Article 3(4) of the Treaty obligates a Party that requires a signature to permit either the applicant or his representative to sign the application, except that a Party may require declarations of use and intention to use a mark to be signed by the applicant.

The existing subsections 1(a) and 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) and 1051(b)) require, respectively, declarations pertaining to use and intention to use a mark and require verification by the applicant of the written application, which includes the aforementioned declarations. Under the terms of the Treaty, the United States may continue to require the aforementioned declarations and may require verification by the applicant of such declarations, but may not require verification by the applicant of the written application. Thus, it becomes necessary to distinguish the declarations of use and intention to use from the other elements of the application.

Additionally, the existing subsections 1(a) and 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) and 1051(b)) require, respectively, a statement of the mode or manner in which the mark is used or intended to be used, in connection with the goods specified in the application. Thus, it becomes necessary to delete the requirement for this statement from the list of required elements in the written application.

Distinction Between Written Application and Verified Declarations

Consistent with the Treaty obligations, the proposed revision will distinguish between the written application and the declarations of use and intention to use for purposes of the signature requirement. The proposed revision will continue to require a written application, in such form as may be prescribed by the Commissioner, and a declaration verified by the applicant, as set forth in the two subsections.

By separating the written application from the verified declarations, there will no longer be a requirement in the law for verification by the applicant of the written application. In the proposed revision, as in the existing subsections, the Commissioner will retain authority to prescribe the form of the application. Thus, the Commissioner will have discretion to permit the written application to be filed with no signature or with the signature of applicant's representative. Also, the Commissioner may permit the filing of a single document, which combines the elements of the written application and the declaration, and which is signed by the applicant, as under the existing subsections.

Elements of the Written Application

The proposed revision specifies a non-exclusive list of elements and grants authority to the Commissioner to prescribe, by regulation and consistent with law and international obligations, additional elements which the Commissioner considers to be necessary for an application and those elements necessary for receipt of a filing date. This proposal improves the ability of the law pertaining to application requirements to accommodate advancing technology and further international procedural harmonization. The proposed revision specifically requires the application to include applicant's domicile and citizenship, the dates of applicant's first use of the mark and first use of the mark in commerce in an application under subsection 1(a), the goods in connection with which the mark is used or intended to be used, and a drawing of the mark. Consistent with the Treaty, the proposed revision omits a requirement for specification of the mode or manner in which the mark is used, or intended to be used, in connection with the goods specified in the application.

Additionally, the proposed revision reorganizes subsections 1(a) and (b) 1946 (15 U.S.C. 1051(a)) and 1051(b)) to clarify the provisions and to modernize the language. To parallel the language of the Treaty, the phrase ''may apply to register'' is replaced by ''may request registration''. Reference to ''firm, corporation or association'' is replaced by a reference to ''juristic person'' or ''person.'' Section 45 defines ''person'' as including ''juristic persons.'' These terms are considered preferable in view of the numerous types of juristic persons in existence today.

The Verified Statement

Rather than requiring in the verified statement a repetition of statements in the written application identifying goods and, in a section 1(a) application, dates of use, the proposed revision requires a statement that, to the best of the applicant's knowledge and belief, the facts recited in the application are accurate. In addition, the proposed revision specifies the averments that the applicant must make in the verified statement concerning applicant's use, or bona fide intention to use, the mark in commerce, ownership of the mark and lack of knowledge of conflicting third party rights. These averments do not differ from those in the existing provisions.

The proposed revision requires verification of the statement by the applicant and omits the specification of the appropriate person to verify the declaration for a juristic applicant, i.e., the proposed revision omits the phrase requiring verification by ''a member of the firm or an officer of the corporation or association applying.'' While this revision is not required by the Treaty, it will greatly simplify the filing of an application without compromising the integrity of the information contained therein. This proposed revision will give the Patent and Trademark Office (''PTO'') the discretion to determine the appropriate person with authority to sign the declaration for a juristic applicant.

Under the existing provision, the PTO has been limited to accepting, for example, only the signature of an officer of a corporation on an application when another corporate manager's signature would be appropriate because the corporate manager has authority to bind the corporation legally or because the corporate manager has specific knowledge of the facts asserted in the application. The unnecessary rigidity of the existing provision has worked a hardship on applicants who have been denied filing dates because the person verifying their application has not met the strict requirement of being an officer of the corporate applicant. Additionally, the Patent and Trademark Office has had difficulty applying the officer requirement to foreign juristic entities whose managers are not clearly officers under the United States' corporate standards.

Revival of Applications After the Notice of Allowance Has Issued

Existing subsection 1(d) (15 U.S.C. 1051(d)) is amended to clarify that applications which are awaiting the filing of a statement of use or a request for extension of time to file a statement of use may be revived if it can be shown to the satisfaction of the Commissioner that the failure to file was unintentional. Although this change is not necessary for the implementation of the TLT, the change clarifies that the Commissioner has the authority to revive such an application so long as reviving the application does not extend the statutory period for filing the statement of use. The standard for revival is that the applicant's failure to file was unintentional. This is the same standard that is being proposed in subsection 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) for reviving applications during the examination process.

SECTION 4. REVIVAL OF AN ABANDONED APPLICATION

Summary of Section 4

This section amends subsection 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) by changing the present standard for reviving an abandoned application upon a showing of ''unavoidable'' delay to the standard of ''unintentional'' delay.

Revival of Applications Under the Historical ''Unavoidable Delay'' Standard

Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) provides that an application is abandoned if the applicant does not timely respond to an Office Action, ''unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.''

Prior to the implementation of the Trademark Act of 1946, there was no statutory provision for abandonment and revival of abandoned trademark applications. There was a regulatory provision that an abandoned application could be revived if it were ''shown to the satisfaction of the Commissioner that the delay in the prosecution of the same was unavoidable,'' However, the legislative history of the Lanham Act is silent as to the meaning or intention behind the ''unavoidable delay'' standard for revival of abandoned applications.

The language of section 12(b) of the Trademark Act of 1946 is virtually identical to the analogous provision of the patent law, 35 U.S.C. 133, which provides for abandonment of patent applications and revival upon a showing of unavoidable delay. The requirements for reviving an ''unavoidably'' abandoned patent applications, set forth in 37 C.F.R. §1.137(a), are identical to the requirements for reviving an abandoned trademark application under 37 C.F.R. §2.66.

Courts have held that the Commissioner has broad discretion in determining whether a delay is unavoidable. Under current law, the Commissioner's decision is subject to judicial review, but will be reversed only if it is arbitrary, capricious, or an abuse of discretion. *Morganroth* v. *Quigg*, 885 F.2d 843, 21 USPQ2d 1125 (Fed. Cir. 1989); *Smith* v. *Mossinghoff*, 671 F.2d 533, 213 USPQ 977 (D.C. Cir. 1982); *Douglas* v. *Manbeck*, 21 USPQ2d 1697 (E.D. Pa. 1991).

Revival of Applications Under the New ''Unintentional Delay'' Standard

Prior to 1982, patent applications, like trademark applications, could be revived only upon a showing of unavoidable delay. Under Public Law 97–247, §3, 96 Stat. 317 (1982) codified at 35 U.S.C. 41(a)(7), it became possible to revive an unintentionally abandoned patent application. Section 41(a)(7) establishes two different fees for filing petitions with two different standards to revive abandoned applications. There is one for a petition to revive an unavoidably abandoned application and another fee for a petition to revive an unintentionally abandoned application. The procedure for petitioning to revive an unintentionally abandoned application is set forth in 37 C.F.R. §1.137(b), effective October 1, 1982. 58 Fed. Reg. 44277 (Aug. 20, 1993); 48 Fed. Reg. 2696 (Jan. 20, 1983). The rule requires, among other things, that the applicant submit a verified statement that the delay was unintentional, and provides that the ''Commissioner may require additional information where there is a question that the delay was unintentional.''

The legislative history of Public Law 97–247 states: Section 41(a)7 establishes two different fees for filing petitions with different standards to revive abandoned applications. . . Since the section provides for two alternative fees with different standards, the section would permit the applicant seeking revival . . . to choose one or the other of the fees and standards under such regulations as the Commissioner may establish. . . *This section would permit the Commissioner to have more discretion than present law to revive abandoned applications . . . in appropriate circumstances* (emphasis added). H.R. Rep. No. 542, 97th Cong. 2d Sess. 6–7 (1982), quoted in *In re Rutan*, 231 USPQ 864, 865 (Comm'r Pats. 1986).

The legislative history of Public Law 97–247 pertains primarily to fees. However, the intent of Congress appears to be to give the Commissioner the power to revive abandoned applications using a much less strict standard than had been previously applied. *In re Rutan*, *supra*. Neither the legislative history of the Lanham Act nor the relevant case law limit the Commissioner's authority to establish procedures for revival of unintentionally abandoned trademark applications.

With the goal of the Trademark Law Treaty to simplify the registration process worldwide, this proposed amendment parallels the unintentional standard for revival available to patent applicants and relaxes the standard for reviving trademark applications. This will enable the majority of applicants, who file a timely petition to revive an application that was abandoned due to an unintentional delay, to proceed to registration from the point that the application became abandoned, rather than requiring these applicants to refile their applications.

SECTION 5. DURATION OF REGISTRATION; CANCELLATION; AFFIDAVIT OF CONTINUED USE; NOTICE OF COMMISSIONER'S ACTION

Note on Sections 5 and 6: Registration Maintenance under the Trademark Law Treaty and Existing U.S. Law

Sections 5 and 6 of this legislation amend existing sections 8 and 9 of the Trademark Act of 1946, which are the two provisions of the Act containing requirements for registration maintenance. These two sections are analogous in their requirements for the filing of a verified document attesting to the use of the mark in commerce and specimens or facsimiles, or a showing of excusable nonuse. Section 8 of the Trademark Act of 1946 requires the aforementioned filing during the year preceding the sixth year following registration to avoid cancellation of the registration. Section 9 of the Trademark Act of 1946 requires the aforementioned filing as part of the registration renewal application.

With the goal of simplifying and harmonizing the process for renewal of a trademark or service mark registration worldwide, Article 13(1) of the Treaty establishes a comprehensive list of indications that may be required in a request to renewal a trademark or service mark registration. This list does not include a declaration and/or evidence concerning use of the mark. Article 13(4)(iii) expressly prohibits a requirement for the furnishing of a declaration and/or evidence concerning use of the mark as part of a request for renewal. However, the Treaty contains no prohibition against a requirement for the periodic filing of a declaration and/or evidence of use in connection with a registration, as long as such requirement is not part of the requirements for renewal. In fact, Article 13(1)(b) of the Treaty, concerning renewal fees, recognizes that fees may be required in connection with the filing of a declaration and/or evidence of use of a registered mark.

Under the terms of the Treaty, the United States may continue to require the periodic filing of a verified document attesting to the use of the mark in commerce and specimens or facsimiles, or a showing of excusable nonuse. However, the United States may not make such a requirement in connection with registration renewal.

Harmonization of Trademark Act Sections 8 and 9 Requirements

The proposed revision harmonizes certain procedural requirements for the affidavits required under this section with the requirements for a registration renewal application contained in section 9 of the Trademark Act of 1946. While both sections contain requirements for registration maintenance, the specific requirements pertaining to the filing required by each existing section differ unnecessarily. These differing requirements have caused confusion to some registrants, particularly those proceeding *pro se*, resulting in the cancellation of registrations of marks still in use in commerce due to noncompliance with the technical requirements of one or the other of these maintenance sections. Furthermore, since the proposed revision to section 8 adds an affidavit requirement at ten-year internals, harmonizing the filing procedures with those for renewal enables the registrant to make both filings at the same time, thus, simplifying registration maintenance.

Summary of Section 5

This section amends section 8 of the Trademark Act of 1946 (15 U.S.C. 1058). The main purpose of the revision of this section is to set out, in one section, all of the requirements for filing any of the affidavits of use needed to maintain a registration and to ensure that the requirements of each use affidavit are identical. This section includes the affidavit of use filed between the fifth and the sixth year after registration, between the fifth and the sixth year after publication under subsection 12(c), and in the year preceding every ten year anniversary of the registration.

This purpose is accomplished by adding an obligation to file an affidavit of use or nonuse, consistent with the requirements set forth in the subsections, in the year preceding every tenth anniversary of the registration, to provide for correction of deficiencies in submissions under these subsections; to provide for a grace period for making submissions required by these subsections; to modernize the language and to simplify and clarify the existing procedural requirements for filing affidavits under these subsections; and to harmonize certain procedural requirements for such affidavits with the requirements for a registration renewal application contained in section 9 of the Trademark Act of 1946.

Subsection 8(a) states the duration of each registration and provides that the registration shall be canceled by the Commissioner if timely affidavits of use are not filed. Paragraph (1) of subsection 8(a) states that an affidavit of use must be filed by the end of six years following registration. Paragraph (2) of subsection 8(a) states that an affidavit of use must be filed by the end of six years following the date of publication under subsection 12(c) of the Trademark Act of 1946 (15 U.S.C. 1062(c)). Paragraph (3) of subsection 8(a) states that an affidavit of use must be filed by the end of each successive ten-year period following the date of registration.

Subsection 8(b) sets out the length of the time period during which the statutory filing can be made and the contents needed in each filing. In every case, there is a one year statutory period for filing the affidavit.

Subsection 8(c) permits the filing of the use affidavit, after the statutory period for filing has ended upon payment of an additional ''grace period'' surcharge. The section also provides that a correction of a deficiency, after the statutory period, may be made upon payment of an additional ''deficiency'' surcharge.

Subsection 8(c)(1) sets out the time period for filing the use affidavit where the statutory period has expired, the so-called ''grace'' period, and gives the Commissioner authority to prescribe a surcharge for affidavits filed during the grace period.

Subsection 8(c)(2) allows for correction of deficiencies in the filings submitted under this section upon payment of the deficiency surcharge.

Subsection 8(d) sets out the requirement that the Commissioner attach to each certificate of registration, and notice of publication under section 12(c), a special notice of the requirement for the affidavits required by this section. This section preserves an obligation of the Commissioner that is set out in the last sentence of existing section 8(a) and in section 12(c).

Subsection 8(e) preserves the obligation of the Commissioner, in existing subsection 8(c), to notify any owner who files an affidavit under section 8 of his acceptance or refusal of the affidavit. The subsection has been revised to reflect the revisions in subsections 8 (a) and (b) by stating that it applies to any of the above prescribed affidavits.

Subsection 8(f) has been added to require the appointment by owners, not domiciled in the United States, of a domestic representative for service of notices or process in proceedings affecting the mark.

Periodic Filing of the Affidavit

The PTO continues to believe in the value of requiring a periodic filing verifying the continued use of the mark as a way to maintain the integrity of the trademark register by periodically removing from the register marks no longer in use in commerce. Therefore, consistent with the Treaty obligations, the proposed revision adds to section 8 of the Trademark Act of 1946 an obligation to file an affidavit of use or excusable non-use, consistent with the requirements set forth in the subsection, in the year preceding the tenth anniversary of the registration and every ten years thereafter. This revision is proposed in view of the proposed deletion of the requirement in connection with registration renewal, in section 9 of the Trademark Act of 1946, for a verified statement attesting to the use of the mark in commerce, accompanied by specimens or facsimiles, or a showing of excusable non-use.

Grace Period and Correction of Deficiencies

Rules 8 of the Regulations under the Trademark Law Treaty provides that renewal request must be accepted for at least a six-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 9 of the Trademark Act of 1946 permit the renewal application to be filed within a three-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 8 of the Trademark Act of 1946 contain no grace period for the filing of the required affidavit after its due date. As described below, the proposed revision incorporates the six-month grace period required by the treaty for filing renewal requests and harmonizes the requirements for filings under sections 8 and 9 of the Trademark Act of 1946. Harmonization of the filing requirements of sections 8 and 9 will require the amendment of both sections to provide this six-month grace period for making the required filing. This amendment is a liberalization of sections 8 and 9 of the Trademark Act of 1946, which is desirable to avoid, to the extent possible, the removal from the register for mere technical reasons of marks that are still in use in commerce.

The proposed revision to section 8 of the Trademark Act of 1946 will amend the existing law by providing a six-month grace period for filing the required affidavit, conditioned upon payment of a ''grace period'' surcharge. Additionally, the proposed revision permits the correction of a deficiency after the sixth anniversary of registration. Such correction must be accompanied by a ''deficiency surcharge'' and be filed no later than the end of a prescribed period after notification of the deficiency. This proposed revision is consistent with the practice proposed in the revision to section 9(a) of the Trademark Act of 1946, concerning renewal.

Only an owner who did not make any filing prior to the end of the statutory period may make the required filing under the grace period provisions. The owner filing an affidavit prior to the end of the statutory period, but correcting a deficiency either during or after the grace period, will be subject to the ''deficiency surcharge'' only. On the other hand, the owner filing an affidavit during the six-month grace period, will be subject to the ''grace period surcharge'' (for the ability to file the affidavit during the grace period) and, if notified of deficiencies, the ''deficiency surcharge'' (for the ability to correct a deficiency after the end of the statutory period.) The proposed revision does not define deficiency or place any limits on the type of deficiency or omission that can be cured after expiration of the statutory filing period. The Commissioner has broad discretion to provide procedures and fees for curing deficiencies or omissions.

Simplification and Clarification of Section 8 of the Trademark Act

The proposed revision conforms the requirements of subsections 8(a) and (b) of the Trademark Act of 1946 to current practice. First, the language in the existing subsections ''attaching to the affidavit a specimen or facsimile showing current use of the mark'' is revised to clarify that the specimens or fascimiles are to be filed along with the affidavit but are not considered part of the affidavit for purposes of complying with the requirement to set forth in the affidavit the goods or services on or in connection with which the mark is in use in commerce. The sentence comprising subsection 8(a) of the Trademark Act of 1946 has been revised to clarify and distinguish the requirements for the fee, the affidavit, the specimens and a showing of non-use. The proposed revision further permits the Commissioner to specify the number of specimens or facsimiles required so that he may require a specimen or facsimile for each class of goods or services identified in the registration. The language ''setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce'' is proposed to be added to parallel the affidavit requirements pertaining to use of the mark and to clarify that the owner must specify the goods or services to which a showing of non-use pertains.

Existing Subsection 8(b)

The requirements set out in former subsection 8(b) of the Trademark Act of 1946, pertaining to marks published pursuant to section 12(c) of the Trademark Act of 1946, have been set out in subsections 8(a)(2), 8(b) and (8)(c) and conform to the proposed revisions as to the time of filing the affidavit, the grace period and the correction of deficiencies.

Existing Subsection 8(c)

Subsection 8(c) of the Trademark Act of 1946 is now set out in subsection 8(e) and has been amended to reflect the revisions in subsections 8 (a) and (b) to add requirements for the periodic filing of additional affidavits by changing reference from ''. . . any owner who files either of the above-prescribed affidavits . . .'' to ''. . . any owner who files one of the above-prescribed affidavits . . .''.

Subsection 8(f)—Appointment of Domestic Representative

Section 5 of this Act proposes to add a section 8(f) to the Trademark Act of 1946 to provide for the appointment of a domestic representative for service of notices or process in proceedings affecting the mark by owners not domiciled in the United States. This new subsection is consistent with similar requirements imposed on applicants by subsection 1(e) of the Trademark Act of 1946. This is necessary because the appointment required in subsection 1(e) of the Trademark Act of 1946 pertains only during the pendency of the application.

Registrant or Owner: Who must file?

Throughout the revised section 8, the term ''registrant'' has been replaced by the term ''owner.'' The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of ''registrant'' in section 45 of the Act states that the ''terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant.'' Therefore, use of the term ''registrant'' in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principle, as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.

SECTION 6. RENEWAL OF REGISTRATION

Summary of Section 6

This section amends subsection 9(a) of the Trademark Act of 1946 to cross-reference the obligatory registration maintenance requirements of section 8 of the Trademark Act of 1946; to delete the obligation to submit as part of a renewal application verified statements regarding the use of the mark in commerce and attaching to the application a specimen or facsimile showing current use of the mark; to extend the time for filing a renewal application to up to one year before the expiration of the period for which the registration was issued or renewed and, for an additional fee, up to six months after the end of the expiring period of the registration; to grant authority to the Commissioner to prescribe the form of the written application for renewal of the registration; and, to permit the correction of deficiencies after the statutory filing period.

This section amends subsection 9(c) to specify the requirements for the appointment by registrants not domiciled in the United States of a domestic representative for service of notices or process in proceedings affecting the mark.

Use Requirement for Registration Renewal

Separate from the obligation to renew a trademark registration at ten-year intervals, the U.S. Patent and Trademark Office continues to believe in the value of requiring a periodic filing verifying the continued use of the mark as a way to maintain the integrity of the trademark register by periodically removing from the register marks no longer in use in commerce. Therefore, consistent with the Treaty obligations, the proposed revision deletes from subsection 9(a) of the Trademark Act of 1946 the requirement that the renewal application include a verified statement attesting to the use of the mark in commerce, accompanied by a specimen or facsimile evidencing current use of the mark, or a showing of excusable non-use. These requirements are proposed to be added to subsection 8(a) of the Trademark Act of 1946 in the form of an obligation to file an affidavit of use or excusable non-use, consistent with the requirements set forth in the subsection, on the tenth anniversary of the registration and every ten years thereafter.

Also, consistent with the treaty obligations, the requirement that the renewal application be verified is proposed to be deleted and the Commissioner is granted authority to prescribe the form of the written renewal application, consistent with law and international treaties or agreements to which the United States is a party.

Grace Period and Harmonization

Rule 8 of the Regulations under the Trademark Law Treaty provides that a renewal request must be accepted for at least a six-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 9 of the Trademark Act of 1946 permit the renewal application to be filed within a three-month period, upon payment of a surcharge, after the date the renewal is due. The revision proposes to change the three-month grace period for requesting registration renewal to the six-month grace period required by the treaty and harmonizes the requirements for filings under sections 8 and 9 of the Trademark Act of 1946. Harmonization of the filing requirements of sections 8 and 9 will require the amendment of both sections to provide this six-month grace period for making the required filing. This amendment is a liberalization of sections 8 and 9 of the Trademark Act of 1946, which is desirable to avoid, to the extent possible, the removal from the register for mere technical reasons of marks that are still in use in commerce. In particular, consistent with the filing requirements in section 8 of the Trademark Act of 1946, the period for filing a renewal request is expressly defined as the period one year prior to expiration of the period for which the registration was issued or renewed, or within a grace period of six months after the end of the expiring period.

Subsection 9(c)—Appointment of Domestic Representatives

Subsection 6(b) of this Act amends subsection 9(c) to the Trademark Act of 1946 to provide for the appointment of a domestic representative for service of notices or process in proceedings affecting the mark by owners not domiciled in the United States, rather than referencing the requirements in subsection 1(e) of the Trademark Act of 1946. This is preferable because the appointment required in subsection 1(e) of the Trademark Act of 1946 pertains only during the pendency of the application.

SECTION 7. RECORDING ASSIGNMENT OF MARK

This section amends section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) to clarify that the PTO will record a change in ownership without requiring a copy of the underlying document; and to remove the proscription against the assignment of a mark in an application filed under section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) (intent-to-use) upon the filing of an amendment to allege use pursuant to section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)).

The PTO has interpreted the present reference to a ''record of assignments'' in section 10 to require the PTO to record a copy of the actual assignment document. Article 11(4) of Trademark Law Treaty prohibits the requirement of a statement or proof of such transfer in order to record an assignment of a trademark registration. The proposed amendment clarifies that, rather than maintaining a ''record of assignments,'' the PTO ''shall maintain a record of the prescribed information on assignments, in such form as may be prescribed by the Commissioner.'' The proposed amendment authorizes the PTO to determine what information regarding assignments it will record and maintain. The proposed amendment will ensure that a transfer of goodwill remains a necessary element of a valid assignment of a trademark; however, the PTO will not require a statement or proof of the transfer of goodwill in order to record an assignment of a trademark registration.

Additionally, pertaining to the proscription against the assignment of a mark in an application filed under section 1(b) of the Trademark Act of 1946 (intent-to-use), the proposed amendment adds reference to section 1(c) of the Trademark Act of 1946 so that the filing of an amendment to allege use pursuant to section 1(c) removes the restriction against assigning the mark except to the successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. Presently, prior to registration of an application filed pursuant to section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) based upon a bona fide intention to use a mark in commerce on the identified goods or services, an applicant must file either a verified statement of use under section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)) or an amendment to allege use under section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)). The substance of the two filings is essentially the same. The difference between the two filings is the point at which the filing is made. Presently, section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) limits the assignability of an application to register a mark under section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) until such time as applicant files a verified statement of use under section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)). Since the effect of the filing of an amendment to allege use under section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)) is analogous, there is no reason in law or policy for omitting to include reference to section 1(c) in section 10.

SECTION 8. INTERNATIONAL CONVENTIONS; COPY OF FOREIGN REGISTRATION

This section amends section 44(e) of the Trademark Act of 1946 (15 U.S.C. 1126(e)) to change the requirement that an application ''be accompanied by a certificate or certified copy'' of the foreign registration, which has been interpreted to be a filing date requirement, so that such copy may be submitted to the PTO prior to registration, within such time limits as may be prescribed by the Commissioner. Such a requirement as a prerequisite to receiving a filing date is prohibited pursuant to Article 5 of the Trademark Law Treaty.

SECTION 9. TRANSITION PROVISIONS

This section clarifies when and how the new provisions set out for the maintenance of registrations will apply to existing and future applications and registrations.

Section 9(a) provides that registrations issued or renewed with a 20 year term, i.e. those registrations issued or renewed prior to the effective date of the Trademark Law Revision Act of 1988, will be subject to the post-registration provisions of this Act on or after a date that is 1 year before the date on which the twenty year term expires. This provision will allow those registrations to have the benefit of the one year statutory filing period and the six-month grace period provided by the Act.

Section 9(b) provides that the Act shall apply to any application for the registration of a trademark pending on, or filed after, the effective date of the Act.

Section 9(c) provides that the filing of an affidavit under Section 5 of the Act, which amends Section 8(b) of the Trademark Act of 1946, shall be required for any registration if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication under section 12(c) of the Trademark Act of 1946, occurs on or after the effective date of this Act.

Section 9(d) provides that the amendment made by section 6 of this Act shall apply to the filing of an application for the renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act.

SECTION 10. EFFECTIVE DATE

This section provides that this Act shall take effect one year after enactment of the Act or upon entry into force of the Treaty in respect to the United States, whichever occurs first. Since the provisions of the Act will modernize and simplify procedures pertaining to trademark application filing and registration maintenance, this section provides that, if the U.S. has not acceded to the treaty and become subject to the obligations thereunder within a year after enactment, the Act will become effective so that its benefits can be realized by trademark owners.

Since the United States is not one of the first five States to deposit its instrument of ratification or accession, Article 20 of the Treaty provides that the Treaty shall enter into force three months after the date on which the instrument of ratification or accession is deposited.

Mr. LEAHY. Mr. President, I am pleased today to introduce the Trademark Law Treaty Implementation and Registration Simplification Act (TLT Act). The TLT Act, which will implement the Trademark Law Treaty of 1994, is an important step in our continuing endeavor to harmonize trademark law around the world so that American businesses—particularly small American businesses—seeking to expand internationally will face simplified and straightforward trademark registration procedures in foreign countries.

This bill is one of a series I have supported which protect American trademark holders in a world of rapidly changing technology and international competition. Earlier this year I introduced S. 1727, legislation authorizing the National Research Council of the National Academy of Sciences to conduct a comprehensive study of the effects of adding new generic Top Level Domains on trademark and other intellectual property rights owners. Moreover, I supported the Federal Trademark Dilution Act of 1995, which was enacted into law last Congress. This legislation provides intellectual property rights holders with the power to enjoin another person's commercial use of famous marks that would cause dilution of the mark's distinctive quality. Together, these measures represent efforts to refine American trademark law to ensure that it promotes American interests.

Today more than ever before, trademarks are among the most valuable assets of business. One of the major obstacles in securing international trademark protection is the difficulty and cost involved in obtaining and maintaining a registration in each and every country. Countries around the world have a number of varying requirements for filing trademark applications, many of which are non-substantive and very confusing. Because of these difficulties, many U.S. businesses, especially smaller businesses,

are forced to concentrate their efforts on registering their trademarks only in certain major countries while pirates freely register their marks in other countries.

The Trademark Law Treaty will eliminate many of the arduous registration requirements of foreign countries by enacting a list of maximum requirements for trademark procedures. Eliminating needless formalities will be an enormous step in the direction of a rational trademark system which will benefit American business, especially smaller businesses, to expand into the international market more freely. Fortunately, the Trademark Law Treaty has already been signed by thirty-five countries, has already been ratified by ten countries including Japan and the United Kingdom, and has already been reported favorably to the full Senate by the Senate Foreign Affairs Committee.

As the United States is already in accordance with most of the Trademark Law Treaty requirements, the TLT Act would impose only minor changes to U.S. trademark law. The Patent and Trademark Office, the International Trademark Association and the American Intellectual Property Law Association have indicated their support for the TLT Act.

I hope the Senate will consider and pass this bill expeditiously.

ADDITIONAL COSPONSORS

S. 389

At the request of Mr. ABRAHAM, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 389, a bill to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes.

S. 472

At the request of Mr. CRAIG, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 472, a bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes.

S. 617

At the request of Mr. JOHNSON, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 778

At the request of Mr. LUGAR, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 778, a bill to authorize a new trade and investment policy for sub-Saharan Africa.

S. 981

At the request of Mr. LEVIN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 981, a bill to provide for analysis of major rules.

S. 1825

At the request of Mrs. MURRAY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1825, a bill to amend title 10, United States Code, to provide sufficient funding to assure a minimum size for honor guard details at funerals of veterans of the Armed Forces, to establish the minimum size of such details, and for other purposes.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1924

At the request of Mr. MACK, the name of the Senator from Michigan (Mr. ABRAHAM) was added as a cosponsor of S. 1924, a bill to restore the standards used for determining whether technical workers are not employees as in effect before the Tax Reform Act of 1986.

S. 2092

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2092, a bill to promote full equality at the United Nations for Israel.

S. 2110

At the request of Mr. BIDEN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2110, a bill to authorize the Federal programs to prevent violence against women, and for other purposes.

S. 2128

At the request of Mr. STEVENS, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

S. 2162

At the request of Mr. MACK, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2162, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment.

SENATE JOINT RESOLUTION 49

At the request of Mr. SMITH, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of Senate Joint Resolution 49, a joint resolution proposing a constitutional amendment to protect human life.

SENATE JOINT RESOLUTION 50

At the request of Mr. BOND, the names of the Senator from Indiana (Mr. LUGAR), and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of Senate Joint Resolution 50, a joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs.

SENATE RESOLUTION 251—CONGRATULATING THE DETROIT RED WINGS ON WINNING THE 1998 NATIONAL HOCKEY LEAGUE STANLEY CUP CHAMPIONSHIP

Mr. LEVIN (for himself and Mr. ABRAHAM) submitted the following resolution; which was considered and agreed to:

S. RES. 251

Whereas on June 16, 1998, the Detroit Red Wings defeated the Washington Capitals, 4–1, in Game 4 of the championship series;

Whereas this victory marks the second year in a row that the Red Wings won the Stanley Cup in a four game sweep;

Whereas the Stanley Cup took its first trip around the rink in the lap of Vladimir Konstantinov, the Red Wing defenseman who was seriously injured in an accident less than a week after Detroit won the Cup last year;

Whereas Vladi and his wife Irina, whose strength and courage are a source of pride and inspiration to our entire community are an exemplary Red Wings family and Vladi's battle is an inspiration to all Americans;

Whereas Marian and Mike Ilitch, the owners of the Red Wings and community leaders in Detroit and Michigan, have brought the Stanley Cup back to Detroit yet again;

Whereas the Red Wings, as one of the original six NHL teams, have always held a special place in the hearts of all Michiganders;

Whereas it was a profound source of pride for Detroit when the Wings brought the Cup back to Detroit in 1954 and 1955, the last time the Wings won consecutive NHL championships;

Whereas today, Detroit continues to provide Red Wings fans with hockey greatness and Detroit, otherwise known as ''Hockeytown, U.S.A.'' is home to the most loyal fans in the world;

Whereas the Red Wings are indebted to Head Coach Scotty Bowman, who has brought the Red Wings to the playoffs 3 times in the last 4 years, and with this year's victory, has earned his eighth Stanley Cup victory, tying him with his mentor Toe Blake for the most championships in league history;

Whereas the Wings are also lucky to have the phenomenal leadership of Team Captain Steve Yzerman, who in his fifteenth season in the NHL, received the Conn Smythe Trophy, given to the most valuable player in the NHL playoffs;

Whereas each one of the Red Wings will be remembered on the premier sports trophy, the Stanley Cup, including Slava Fetisov, Bob Rouse, Nick Lidstrom, Igor Larionov, Mathieu Dandenault, Slava Kozlov, Brendan Shanahan, Dmitri Mironov, Doug Brown, Kirk Maltby, Steve Yzerman, Martin

Lapointe, Mike Knuble, Darren McCarty, Joe Kocur, Aaron Ward, Chris Osgood, Kevin Hodson, Kris Draper, Jamie Macoun, Brent Gilchrist, Anders Eriksson, Larry Murphy, Sergei Federov, and Tomas Holmstrom: Now, therefore, be it

Resolved, That the U.S. Senate congratulates the Detroit Red Wings on winning the 1998 National Hockey League Stanley Cup Championship.

AMENDMENTS SUBMITTED

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

INOUYE AMENDMENT NO. 2713

Mr. GORTON (for Mr. INOUYE) proposed an amendment to the bill (S. 2138) making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes; as follows:

On page 18, add the following before the period:

''*:Provided further*, The Secretary of the Interior is directed to use not to exceed $200,000 of funds appropriated herein to provide technical assistance in a study of measures to increase the efficiency of existing water systems developed to serve sugar cane plantations and surrounding communities in the State of Hawaii''.

DASCHLE AMENDMENT NO. 2714

Mr. DASCHLE proposed an amendment to the bill, S. 2138, supra; as follows:

At the appropriate place insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Tobacco Policy and Youth Smoking Reduction Act''.

(b) TABLE OF CONTENTS.—The table of contents for 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 epic and worsening 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) The citizens of the several States are exposed to, and adversely affected by, environmental smoke in public buildings and other facilities which imposes a burden on interstate commerce.

(13) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of antitrust, health, consumer protection, and other laws.

(14) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(15) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(16) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(17) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(18) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(19) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(20) 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.

(21) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

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

(23) 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.

(24) 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.

(25) 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.

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

(27) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(28) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

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

(30) 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.

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

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

(33) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

(34) 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.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to clarify the authority of 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 require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide licensing system to prevent minors from obtaining tobacco products and to prevent the unlawful distribution of tobacco products, while expressly permitting the States to

adopt additional measures that further restrict or eliminate the products' use;

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

(5) to impose financial surcharges on tobacco product manufacturers if tobacco use by young people does not substantially decline;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults 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;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, while also to permit State, Tribal, and local governments to enact additional and more stringent standards or elect not to be covered by the Federal standard if that State's standard is as protective, or more protective, of the public health;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) 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;

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

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

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

(2) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of 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. RELATIONSHIP TO OTHER, RELATED FEDERAL, STATE, LOCAL, AND TRIBAL LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, 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, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) NO LESS STRINGENT.—Nothing in this Act or the amendments made by this Act is intended to supersede any State, local, or Tribal law that is not less stringent than this Act, or other Acts as amended by this Act.

(d) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) 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.

(2) 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.

(3) 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.

(4) 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)).

(5) DISTRIBUTOR.—The term ''distributor'' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, 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 Act.

(6) INDIAN COUNTRY; INDIAN LANDS.—The terms ''Indian country'' and ''Indian lands'' have the meaning given the term ''Indian country'' by section 1151 of title 18, United States Code, and includes lands owned by an Indian tribe or a member thereof over which the United States exercises jurisdiction on behalf of the tribe or tribal member.

(7) 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)).

(8) 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)).

(9) 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.

(10) 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 cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) POINT-OF-SALE.—The term ''point-of-sale'' means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

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

(13) 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.

(14) SECRETARY.—Except in title VII and where the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

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

(16) STATE.—The term ''State'' means any State of the United States and, for purposes of this Act, 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.

(17) TOBACCO PRODUCT.—The term ''tobacco product'' means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut products.

(18) TOBACCO PRODUCT MANUFACTURER.—Except in titles VII, X, and XIV, the term ''tobacco product manufacturer'' means any person, including any repacker or relabeler, who—

(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless 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. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that underage use of pipe tobacco and cigars is increasing.

SEC. 8. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act 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.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act or part 897 of title 21, Code of Federal Regulations, 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).

SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(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:

''(kk) 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).''.

(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. 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 health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) Nothing in this chapter, any policy issued or regulation promulgated thereunder, or the National Tobacco Policy and Youth Smoking Reduction 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 of the Federal Food, Drug and Cosmetic Act or any other chapter of that Act.

''(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, 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 whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. 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. 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. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

''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 poisonous or 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 container 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 performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(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 a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

''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; and

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

except that under subparagraph (B) of this paragraph 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), 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, distributed, or used 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 defined in paragraph (4) of this subsection, 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 necessary 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 performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

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

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

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

''(C) to comply with a requirement under section 912.

''(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—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 and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

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

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component 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.

''(3) 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, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

''(4) 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.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

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.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—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 this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—As used in this section—

''(1) 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; and

''(2) 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) of this section 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 one 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 MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may 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), or (d) of this section 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 performance 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 performance 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) of this subsection. 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 August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation 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 August 11, 1995, 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-AUGUST 11TH 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 August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

''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, 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, 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, or 910, 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 therefor) 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 therefor.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 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) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. 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 condition 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) 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) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

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

''(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production 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.

''(B) The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an 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) 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) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The 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 an advisory committee,

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

''(C) 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) 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) 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 with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation.

''(g) 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. PERFORMANCE STANDARDS.

''(a) IN GENERAL.—

''(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance 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.

''(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

''(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction or elimination of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where necessary to be appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, 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 performance 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.

''(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance 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 (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

''(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, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

''(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the performance 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 performance standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or proposed performance standard, for consideration by the Secretary.

''(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance 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.

''(E) The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

''(i) promulgate a regulation establishing a performance 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) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one 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) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

''(4) AMENDMENT; REVOCATION.—

''(A) 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) of this subsection, amend or revoke a performance standard.

''(B) The Secretary may declare a proposed amendment of a performance 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—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, 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 an 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 subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The 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) 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) 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) of this subsection 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) Except as provided in paragraph (3), 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) 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) of this section.

''SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

''(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

''(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

''(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) For purposes of this section and section 905(j), the term '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) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) 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.

''(3) HEALTH INFORMATION.—

''(A) 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) 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, 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 performance 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 performance

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 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) shall, upon the request of an applicant,

refer such application to an advisory committee 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) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, 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 one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) 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 performance 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 one 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 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.

''(5) BASIS FOR ACTION.—

''(A) 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 one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) 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 performance 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 thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

''(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.

''SEC. 911. JUDICIAL REVIEW.

''(a) IN GENERAL.—Not later than 30 days after—

''(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and 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) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for

written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section 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 in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) 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.

''(e) 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.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

''SEC. 912. POSTMARKET SURVEILLANCE

''(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer 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 useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

''SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

''(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

''(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

''(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

''(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

''(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

''(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

''(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

''SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) Except as provided in 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 applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

''(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(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.

''(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

''(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

''(2) the requirement—

''(A) is required by compelling local conditions; and

''(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

''SEC. 915. 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. 102. 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) by inserting ''tobacco product,'' in subsection (a) after ''device,'';

(2) by inserting ''tobacco product,'' in subsection (b) after ''device,'';

(3) by inserting ''tobacco product,'' in subsection (c) after ''device,'';

(4) by striking ''515(f), or 519'' in subsection (e) and inserting ''515(f), 519, or 909'';

(5) by inserting ''tobacco product,'' in subsection (g) after ''device,'';

(6) by inserting ''tobacco product,'' in subsection (h) after ''device,'';

(7) by striking ''708, or 721'' in subsection (j) and inserting ''708, 721, 904, 905, 906, 907, 908, or 909'';

(8) by inserting ''tobacco product,'' in subsection (k) 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(J)(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), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522 or 912.'';

(11) by striking ''device,'' in subsection (q)(2) and inserting ''device or tobacco product,'';

(12) by inserting ''or tobacco product'' in subsection (r) after ''device'' each time that it appears; and

(13) by adding at the end thereof the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by amending the caption to read as follows:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) by inserting ''or tobacco products'' after ''devices'' in paragraph (1)(A);

(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) by striking ''assessed'' the first time it appears in subparagraph (A) of paragraph (4), as redesignated, and inserting ''assessed, or a no-tobacco-sale order may be imposed,'';

(5) by striking ''penalty'' in such subparagraph and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(6) by inserting after ''penalty,'' in subparagraph (B) of paragraph (4), as redesignated, the following: ''or the period to be covered by a no-tobacco-sale order,'';

(7) by adding at the end of such subparagraph 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.'';

(8) by adding at the end of paragraph (4), as redesignated, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(9) by striking ''(3)(A)'' in paragraph (5), as resdesignated, and inserting ''(4)(A)'';

(10) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears in such paragraph;

(11) by striking ''issued.'' in such paragraph and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(12) by striking ''paragraph (4)'' each place it appears in paragraph (6), as redesignated, and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking ''and'' before ''(D)'' in subsection (a)(2);

(2) by striking ''device.'' in subsection (a)(2) and inserting a comma and ''(E) Any adulterated or misbranded tobacco product.'';

(3) by inserting ''tobacco product,'' in subsection (d)(1) after ''device,'';

(4) by inserting ''or tobacco product'' in subsection (g)(1) after ''device'' each place it appears; and

(5) by inserting ''or tobacco product'' in subsection (g)(2)(A) 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) by inserting ''tobacco products,'' in subsection (a)(1)(A) after ''devices,'' each place it appears;

(2) by inserting ''or tobacco products'' in subsection (a)(1)(B) after ''restricted devices'' each place it appears; and

(3) by inserting ''tobacco product,'' in subsection (b) 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) by inserting ''tobacco products,'' after ''devices,'' in subsection (a) the first time it appears;

(2) by inserting ''or subsection (j) of section 905'' in subsection (a) after ''section 510''; and

(3) by striking ''drugs or devices'' each time it appears in subsection (a) and inserting ''drugs, devices, or tobacco products'';

(4) by inserting ''tobacco product,'' in subsection (e)(1) after ''device,'';

(5) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

''(4) Paragraph (1) does not apply to any tobacco product—

''(A) which does not comply with an applicable requirement of section 907 or 910; or

''(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.''.

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking ''device—'' in subsection (a) and inserting ''device or tobacco product—'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

''(C) is a banned device under section 516; or

''(3) which, in the case of a tobacco product—

''(A) does not comply with an applicable requirement of section 907 or 910; or

''(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.'';

(4) by inserting ''or tobacco product'' in subsection (b)(1)(A) after ''device'' each time it appears;

(5) by inserting ''or tobacco product'' in subsection (c) after ''device'' and inserting ''or section 906(f)'' after ''520(g).'';

(6) by inserting ''or tobacco product'' in subsection (f) after ''device'' each time it appears; and

(7) by inserting ''or tobacco product'' in subsection (g) after ''device'' each time it appears.

(l) 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''.

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(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 that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(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 false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary in the August 28, 1996, issue of the Federal Register (62 Fed. Reg. 44615-44618) and codified at part 897 of title 21, Code of Federal Regulations, are hereby deemed to be lawful and to have been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act, as amended by this Act, and not under chapter V of the Federal Food, Drug, and Cosmetic Act. The provisions of part 897 that are not in effect on the date of enactment of this Act shall take effect as in such part or upon such later date as determined by the Secretary by

order. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(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 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)).

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) be a household-based, in person survey (which may include computer-assisted technology);

(C) measure use of each type of tobacco product within the past 30 days;

(D) identify the usual brand of each type of tobacco product used within the past 30 days; and

(E) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(E) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$4,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$400,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the nonattainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the de minimis level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the de minimis level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the de minimis level.

(4) DE MINIMIS LEVEL DEFINED.—The de minimis level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the de minimis level described in paragraph (4), the base incidence percentage is the de minimis level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the number of percentage points necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the de minimis level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) AMOUNT.—The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000, multiplied by the number of young individuals for which such firm is in noncompliance with respect to its target reduction level.

(C) DETERMINATION OF NUMBER OF YOUNG INDIVIDUALS.—For purposes of subparagraph (B) the number of young individuals for which a manufacturer is in noncompliance for a year shall be determined by the Secretary from the annual performance survey and shall be calculated based on the estimated total number of young individuals in such year and the actual percentage prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used in such year as compared to such manufacturer's target reduction level for the year.

(7) DE MINIMIS RULE.—The Secretary may not impose a surcharge on a manufacturer for a type of tobacco product for a year if the Secretary determines that actual percent prevalence of young individuals identifying that manufacturer's brands of such tobacco product as the usual products smoked or used for such year is less than 1 percent.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), and (f)(6)(B) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

Subtitle B—State Retail Licensing and Enforcement Incentives

SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall make State retail licensing and enforcement block grants in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $200,000,000 for each fiscal year to carry out the provisions of this section.

(b) REQUIREMENTS.—

(1) ESTABLISHMENT.—The Secretary shall provide a block grant, based on population, under this subtitle to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers;

(B) makes it illegal to sell or distribute tobacco products to individuals under 18 years of age; and

(C) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age in accordance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.14(a) and (b));

(C) shall make available to appropriate Federal agencies designated by the Secretary requested information concerning retail establishments involved in the sale or distribution of tobacco products to consumers; and

(D) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE; SOURCES; AND NOTICE.—A requirement for a State license for each retail establishment involved in the sale or distribution of tobacco products to consumers. A requirement that a retail establishment may purchase tobacco products only from Federally-licensed manufacturers, importers, or wholesalers. A program under which notice is provided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties for the sale or distribution of tobacco products in violation of State law, including graduated fines and suspension or revocation of licenses for repeated violations.

(III) OTHER.—Other programs, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures for an action of the State suspending, revoking, denying, or refusing to renew any license under its program.

(c) ENFORCEMENT.—

(1) UNDERTAKING.—Each State that receives a grant under this subtitle shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State that receives a grant under this subtitle shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing in detail—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years;

(iii) how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality; and

(iv) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(3) MINIMUM INSPECTION STANDARDS.—Inspections conducted by the State shall be conducted by the State in such a way as to ensure a scientifically sound estimate (with a 95 percent confidence interval that such estimates are accurate to within plus or minus 3 percentage points), using an accurate list of retail establishments throughout the State. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term ''outlet'' refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(d) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (b) in any calendar year an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least the annual compliance targets that were negotiated with the Secretary under section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) as such section was in effect before its repeal by this Act through the third fiscal year after the date of enactment of this Act;

(B) at least 80 percent in the fourth fiscal year after such date;

(C) at least 85 percent in the fifth and sixth fiscal years after such date; and

(D) at least 90 percent in every fiscal year beginning with the seventh fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(e) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under this section has been ordered withheld under subsection (d), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State presents scientifically sound survey data showing that the State is making significant progress toward reducing the use of tobacco products by individuals who have not attained the age of 18 years;

(B) the State presents scientifically-based data showing that it has progressively decreased the availability of tobacco products to such individuals;

(C) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(D) the State provides evidence that it plans to improve enforcement of these laws in the next fiscal year; and

(E) any other relevant evidence.

(4) A State is entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

(f) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary shall promulgate regulations establishing Federal retail licensing for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of

those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

(g) DEFINITION.—For the purposes of this section, the term ''first applicable fiscal year'' means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.

(a) IN GENERAL.—The Secretary shall make block grants to States determined to be eligible under subsection (b) in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $100,000,000 for each fiscal year to carry out the provisions of this section.

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State shall—

(1) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT.—

(1) PAYMENT TO STATE.—If one or more States are eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(2) YEAR IN WHICH NO STATE RECEIVES GRANT.—If in any fiscal year no State is eligible to receive a grant under this section, then the Secretary may use not more than 25 percent of the amount appropriated to carry out this section for that fiscal year to support efforts to improve State and local enforcement of laws regulating the use, sale, and distribution of tobacco products to individuals under the age of 18 years.

(3) AMOUNTS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Any amount appropriated under this section remaining unexpended and unobligated at the end of a fiscal year shall remain available for obligation and expenditure in the following fiscal year.

SEC. 233. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

SEC. 261. TOBACCO USE PREVENTION AND CESSATION INITIATIVES.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following:

''PART D—TOBACCO USE PREVENTION AND CESSATION INITIATIVES

''SUBPART I—CESSATION AND COMMUNITY-BASED PREVENTION BLOCK GRANTS

''SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

''(a) IN GENERAL.—From amounts contained in the Public Health Allocation Account under section 451(b)(2)(A) and (C) of the National Tobacco Policy and Youth Smoking Reduction Act for a fiscal year, there are authorized to be appropriated (under subsection (d) of such section) to carry out this subpart—

''(1) for cessation activities, the amounts appropriated under section 451(b)(2)(A); and

''(2) for prevention and education activities, the amounts appropriated under section 451(b)(2)(C).

''(b) NATIONAL ACTIVITIES.—

''(1) Not more than 10 percent of the amount made available for any fiscal year under subsection (a) shall be made available to the Secretary to carry out activities under section 1981B and 1981D(d).

''(2) Not more than 10 percent of the amount available for any fiscal year under subsection (a)(1) shall be available to the Secretary to carry out activities under section 1981D(d).

''SEC. 1981A. ALLOTMENTS.

''(a) AMOUNT.—

''(1) IN GENERAL.—From the amount made available under section 1981 for any fiscal year the Secretary, acting through the Director of the Centers for Disease Control and Prevention (referred to in this subpart as the 'Director'), shall allot to each State an amount based on a formula to be developed by the Secretary that is based on the tobacco prevention and cessation needs of each State including the needs of the State's minority populations.

''(2) MINIMUM AMOUNT.—In determining the amount of allotments under paragraph (1), the Secretary shall ensure that no State receives less than ½ of 1 percent of the amount available under section 1981(a) for the fiscal year involved.

''(b) REALLOTMENT.—To the extent that amounts made available under section 1981 for a fiscal year are not otherwise allotted to States because—

''(1) 1 or more States have not submitted an application or description of activities in accordance with section 1981D for the fiscal year;

''(2) 1 or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

''(3) the Secretary has determined that the State is not in compliance with this subpart, and therefore is subject to penalties under section 1981D(g);

such excess amount shall be reallotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year involved without regard to this subsection.

''(c) PAYMENTS.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall utilize the funds made available under this section to make payments to States under allotments under this subpart as provided for under section 203 of the Intergovernmental Cooperation Act of 1968.

''(2) FEDERAL GRANTEES.—From amounts available under section 1981(b)(2), the Secretary may make grants, or supplement existing grants, to entities eligible for funds under the programs described in section 1981C(d)(1) and (10) to enable such entities to carry out smoking cessation activities under this subpart, except not less than 25 percent of this amount shall be used for the program described in 1981C(d)(6).

''(3) AVAILABILITY OF FUNDS.—Any amount paid to a State for a fiscal year under this subpart and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such payment was made.

''(d) REGULATIONS.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate regulations to implement this subpart. This subpart shall take effect regardless of the date on which such regulations are promulgated.

''SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.

''(a) TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, without charge to a State receiving an allotment under section 1981A, provide to such State (or to any public or nonprofit private entity within the State) technical assistance and training with respect to the planning, development, operation, and evaluation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance or training directly, through contract, or through grants.

''(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU OF GRANT FUNDS.—The Secretary, at the request of a State, may reduce the amount of payments to the State under section 1981A(c) by—

''(1) the fair market value of any supplies or equipment furnished by the Secretary to the State; and

''(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 1981C. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

''SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK GRANTS AND OF COMMUNITY-BASED PREVENTION BLOCK GRANTS.

''(a) TOBACCO USE CESSATION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(1) may be used for the following:

''(1) Evidence-based cessation activities described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) evidence-based programs designed to assist individuals, especially young people and minorities who have been targeted by tobacco product manufacturers, to quit their use of tobacco products;

''(B) training in cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(C) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions and therapies, except that the use of any funds under this clause to offset the cost of providing a smoking cessation benefit shall be on a temporary demonstration basis only;

''(D) culturally and linguistically appropriate programs targeted toward minority and low-income individuals, individuals residing in medically underserved areas, uninsured individuals, and pregnant women;

''(E) programs to encourage employer-based wellness programs to provide evidence-based tobacco use cessation intervention and therapies; and

''(F) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(b) STATE AND COMMUNITY ACTION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(2) may be used for the following:

''(1) Evidence-based activities for tobacco use prevention and control described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) State and community initiatives;

''(B) community-based prevention programs, similar to programs currently funded by NIH;

''(C) programs focused on those populations within the community that are most at risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

''(D) school programs to prevent and reduce tobacco use and addiction, including school programs focused in those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

''(E) culturally and linguistically appropriate initiatives targeted towards minority and low-income individuals, individuals residing in medically underserved areas, and women of child-bearing age;

''(F) the development and implementation of tobacco-related public health and health promotion campaigns and public policy initiatives;

''(G) assistance to local governmental entities within the State to conduct appropriate anti-tobacco activities.

''(H) strategies to ensure that the State's smoking prevention activities include minority, low-income, and other undeserved populations; and

''(I) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(c) COORDINATION.—Tobacco use cessation and community-based prevention activities permitted under subsections (b) and (c) may be conducted in conjunction with recipients of other Federally—funded programs within the State, including—

''(1) the special supplemental food program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

''(2) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.);

''(3) the State Children's Health Insurance Program of the State under title XXI of the Social Security Act (42 U.S.C. 13397aa et seq.);

''(4) the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.);

''(5) an Indian Health Service Program;

''(6) the community, migrant, and homeless health centers program under section 330 of the Public Health Service Act (42 U.S.C. 254b);

''(7) state-initiated smoking cessation programs that include provisions for reimbursing individuals for medications or therapeutic techniques;

''(8) the substance abuse and mental health services block grant program, and the preventive health services block grant program, under title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.);

''(9) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

''(10) programs administered by the Department of Defense and the Department of Veterans Affairs.

''(d) LIMITATION.—A State may not use amounts paid to the State under section 1981A(c) to—

''(1) make cash payments except with appropriate documentation to intended recipients of tobacco use cessation services;

''(2) fund educational, recreational, or health activities not based on scientific evidence that the activity will prevent smoking or lead to success of cessation efforts

''(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

''(4) satisfy any requirement for the expenditure of non-Federal funds as a condition of the receipt of Federal funds; or

''(5) provide financial assistance to any entity other than a public or nonprofit private entity or a private entity consistent with subsection (b)(1)(C).

This subsection shall not apply to the support of targeted pilot programs that use innovative and experimental new methodologies and include an evaluation component.

''(e) ADMINISTRATION.—Not more than 5 percent of the allotment of a State for a fiscal year under this subpart may be used by the State to administer the funds paid to the State under section 1981A(c). The State shall pay from non-Federal sources the remaining costs of administering such funds.

''SEC. 1981D. ADMINISTRATIVE PROVISIONS.

''(a) APPLICATION.—The Secretary may make payments under section 1981A(c) to a State for a fiscal year only if—

''(1) the State submits to the Secretary an application, in such form and by such date as the Secretary may require, for such payments;

''(2) the application contains a State plan prepared in a manner consistent with section 1905(b) and in accordance with tobacco-related guidelines promulgated by the Secretary;

''(3) the application contains a certification that is consistent with the certification required under section 1905(c); and

''(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this subpart (including assurances regarding compliance with the agreements described in subsection (c)).

''(b) STATE PLAN.—A State plan under subsection (a)(2) shall be developed in a manner consistent with the plan developed under section 1905(b) except that such plan—

''(1) with respect to activities described in section 1981C(b)—

''(A) shall provide for tobacco use cessation intervention and treatment consistent with the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research, or another evidence-based guideline approved by the Secretary, or treatments using drugs, human biological products, or medical devices approved by the Food and Drug Administration, or otherwise legally marketed under the Federal Food, Drug and Cosmetic Act for use as tobacco use cessation therapies or aids;

''(B) may, to encourage innovation and experimentation with new methodologies, provide for or may include a targeted pilot program with an evaluation component;

''(C) shall provide for training in tobacco use cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(D) shall ensure access to tobacco use cessation programs for rural and underserved populations;

''(E) shall recognize that some individuals may require more than one attempt for successful cessation; and

''(F) shall be tailored to the needs of specific populations, including minority populations; and

''(2) with respect to State and community-based prevention activities described in section 1981C(c), shall specify the activities authorized under such section that the State intends to carry out.

''(c) CERTIFICATION.—The certification referred to in subsection (a)(3) shall be consistent with the certification required under section 1905(c), except that

''(1) the State shall agree to expend payments under section 1981A(c) only for the activities authorized in section 1981C;

''(2) paragraphs (9) and (10) of such section shall not apply; and

''(3) the State is encouraged to establish an advisory committee in accordance with section 1981E.

''(d) REPORTS, DATA, AND AUDITS.—The provisions of section 1906 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part, except that the data sets referred to in section 1905(a)(2) shall be developed for uniformly defining levels of youth and adult use of tobacco products, including uniform data for racial and ethnic groups, for use in the reports required under this subpart.

''(e) WITHHOLDING.—The provisions of 1907 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(f) NONDISCRIMINATION.—The provisions of 1908 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(g) CRIMINAL PENALTIES.—The provisions of 1909 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''SEC. 1981E. STATE ADVISORY COMMITTEE.

''(a) IN GENERAL.—For purposes of sections 1981D(c)(3), an advisory committee is in accordance with this section if such committee meets the conditions described in this subsection.

''(b) DUTIES.—The recommended duties of the committee are—

''(1) to hold public hearings on the State plans required under sections 1981D; and

''(2) to make recommendations under this subpart regarding the development and implementation of such plans, including recommendations on—

''(A) the conduct of assessments under the plans;

''(B) which of the activities authorized in section 1981C should be carried out in the State;

''(C) the allocation of payments made to the State under section 1981A(c);

''(D) the coordination of activities carried out under such plans with relevant programs of other entities; and

''(E) the collection and reporting of data in accordance with section 1981D.

''(c) COMPOSITION.—

''(1) IN GENERAL.—The recommended composition of the advisory committee is members of the general public, such officials of the health departments of political subdivisions of the State, public health professionals, teenagers, minorities, and such experts in tobacco product research as may be necessary to provide adequate representation of the general public and of such health departments, and that members of the committee shall be subject to the provisions of sections 201, 202, and 203 of title 18, United States Code.

''(2) REPRESENTATIVES.—With respect to compliance with paragraph (1), the membership of the advisory committee may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 1981C.

''SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING PROGRAMS

''SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PROGRAMS.

''(a) NATIONAL CAMPAIGN.—

''(1) IN GENERAL.—The Secretary shall conduct a national campaign to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke.

''(2) REQUIREMENTS.—The national campaign under paragraph (1) shall—

''(A) target those populations that have been targeted by tobacco industry advertising using culturally and linguistically appropriate means;

''(B) include a research and evaluation component; and

''(C) be designed in a manner that permits the campaign to be modified for use at the State or local level.

''(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

''(1) IN GENERAL.—The Secretary shall establish a board to be known as the 'National Tobacco Free Education Advisory Board' (referred to in this section as the 'Board') to evaluate and provide long range planning for the development and effective dissemination of public informational and educational campaigns and other activities that are part of the campaign under subsection (a).

''(2) COMPOSITION.—The Board shall be composed of—

''(A) 9 non-Federal members to be appointed by the President, after consultation and agreement with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the Health or Representatives, of which—

''(i) at least 3 such members shall be individuals who are widely recognized by the general public for cultural, educational, behavioral science or medical achievement;

''(ii) at least 3 of whom shall be individuals who hold positions of leadership in major public health organizations, including minority public health organizations; and

''(iii) at least 3 of whom shall be individuals recognized as experts in the field of advertising and marketing, of which—

''(I) 1 member shall have specific expertise in advertising and marketing to children and teens; and

''(II) 1 member shall have expertise in marketing research and evaluation; and

''(B) the Surgeon General, the Director of the Centers for Disease Control and Prevention, or their designees, shall serve as an ex officio members of the Board.

''(3) TERMS AND VACANCIES.—The members of the Board shall serve for a term of 3 years. Such terms shall be staggered as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(4) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

''(5) AWARDS.—In carrying out subsection (a), the Secretary may—

''(A) enter into contracts with or award grants to eligible entities to develop messages and campaigns designed to prevent and reduce the use of tobacco products that are based on effective strategies to affect behavioral changes in children and other targeted populations, including minority populations;

''(B) enter into contracts with or award grants to eligible entities to carry out public informational and educational activities designed to reduce the use of tobacco products;

''(6) POWERS AND DUTIES.—The Board may—

''(A) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section; and

''(B) secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

''(c) ELIGIBILITY.—To be eligible to receive funding under this section an entity shall—

''(1) be a—

''(A) public entity or a State health department; or

''(B) private or nonprofit private entity that—

''(i)(I) is not affiliated with a tobacco product manufacturer or importer;

''(II) has a demonstrated record of working effectively to reduce tobacco product use; or

''(III) has expertise in conducting a multimedia communications campaign; and

''(ii) has expertise in developing strategies that affect behavioral changes in children and other targeted populations, including minority populations;

''(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

''(3) provide assurances that amounts received under this section will be used in accordance with subsection (c); and

''(4) meet any other requirements determined appropriate by the Secretary.

''(d) USE OF FUNDS.—An entity that receives funds under this section shall use amounts provided under the grant or contract to conduct multi-media and non-media public educational, informational, marketing and promotional campaigns that are designed to discourage and de-glamorize the use of tobacco products, encourage those using such products to quit, and educate the public about the hazards of exposure to environmental tobacco smoke. Such amounts may be used to design and implement such activities and shall be used to conduct research concerning the effectiveness of such programs.

''(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Secretary shall take into consideration the needs of particular populations, including minority populations, and use methods that are culturally and linguistically appropriate.

''(f) COORDINATION.—The Secretary shall ensure that programs and activities under this section are coordinated with programs and activities carried out under this title.

''(g) ALLOCATION OF FUNDS.—Not to exceed—

''(1) 25 percent of the amount made available under subsection (h) for each fiscal year shall be provided to States for State and local media-based and nonmedia-based education, prevention and cessation campaigns;

''(2) no more than 20 percent of the amount made available under subsection (h) for each fiscal year shall be used specifically for the development of new messages and campaigns;

''(3) the remainder shall be used specifically to place media messages and carry out other dissemination activities described in subsection (d); and

''(4) half of 1 percent for administrative costs and expenses.

''(h) TRIGGER.—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.''.

''PART E—REDUCING YOUTH SMOKING AND TOBACCO-RELATED DISEASES THROUGH RESEARCH

''SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

No expenditures shall be made under sections 451(b) or (c)—

''(1) for the National Institutes of Health during any fiscal year in which the annual amount appropriated for such Institutes is less than the amount so appropriated for the prior fiscal year;

''(2) for the Centers for Disease Control and Prevention during any fiscal year in which the annual amount appropriated for such Centers is less than the amount so appropriated for the prior fiscal year; or

''(3) for the Agency for Health Care Policy and Research during any fiscal year in which the annual amount appropriated for such Agency is less than the amount so appropriated for the prior fiscal year.

''SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.

''(a) CONTRACT.—Not later than 60 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used under this part.

''(b) CONSIDERATIONS.—

''(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

''(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically include research on—

''(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

''(B) behavioral research relating to addiction, tobacco use, and patterns of smoking, including risk factors for tobacco use by children, women, and racial and ethnic minorities;

''(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

''(D) surveillance and epidemiology research relating to tobacco;

''(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases, including a focus on minorities, including racial and ethnic minorities;

''(F) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

''(G) differentials between brands of tobacco products with respect to health effects or addiction;

''(H) risks associated with environmental exposure to tobacco smoke, including a focus on children and infants;

''(I) effects of tobacco use by pregnant women; and

''(J) other matters determined appropriate by the Institute.

''(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommendations of the Institute for the purposes described in subsection (b).

''SEC. 1991B. RESEARCH COORDINATION.

''(a) IN GENERAL.—The Secretary shall foster coordination among Federal research agencies, public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

''(b) REPORT.—The Secretary shall prepare and submit a report on a biennial basis to the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned tobacco-related research activities of participating Federal agencies.

''SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

''(a) DUTIES.—The Director of the Centers for Disease Control and Prevention shall, from amounts provided under section 451(c), and after review of the study of the Institute of Medicine, carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies; and

''(b) YOUTH SURVEILLANCE SYSTEMS.—From amounts provided under section 451(b), the Director of the Centers for Disease Control and Prevention shall provide for the use of youth surveillance systems to monitor the use of all tobacco products by individuals under the age of 18, including brands-used to enable determinations to be made of company-specific youth market share.

''SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

''(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section 401 of the National Tobacco Policy and Youth Smoking Reduction Act.

''(b) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research, including research related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

''(c) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, such sums as may be necessary, may be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

''(d) NATURE OF RESEARCH.—Funds made available under subsection (d) may be used to conduct or support research with respect to one or more of the following—

''(1) the epidemiology of tobacco use;

''(2) the etiology of tobacco use;

''(3) risk factors for tobacco use by children;

''(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

''(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

''(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

''(7) the toxicity of tobacco products and their ingredients;

''(8) the relative harmfulness of different tobacco products;

''(9) environmental exposure to tobacco smoke;

''(10) the impact of tobacco use by pregnant women on their fetuses;

''(11) the redesign of tobacco products to reduce risks to public health and safety; and

''(12) other appropriate epidemiological, behavioral, and social science research.

''(e) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health shall ensure appropriate coordination with the research of other agencies, and shall avoid duplicative efforts through all appropriate means.

''(h) ADMINISTRATION.—The director of the NIH Office of Behavioral and Social Sciences Research may—

''(1) identify tobacco-related research initiatives that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

''(2) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

''(3) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

''(4) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

''(f) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

''(g) REPORT.—The Director of the NIH shall every 2 years prepare and submit to the Congress a report ——— research activities, including funding levels, for research made available under subsection (c).

(b) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r–8(d)) is amended—

(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

(2) by striking ''drugs.'' in subparagraph (F), as redesignated, and inserting ''drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.''.

''SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

''(a) IN GENERAL.—The Administrator of the Agency for Health Care Policy and Research shall carry out outcomes, effectiveness, cost-effectiveness, and other health services research related to effective interventions for the prevention and cessation of tobacco use and appropriate strategies for implementing those services, the outcomes and delivery of care for diseases related to tobacco use, and the development of quality measures for evaluating the provision of those services.

''(b) ANALYSES AND SPECIAL PROGRAMS.—The Secretary, acting through the Administrator of the Agency for Health Care Policy and Research, shall support—

''(1) and conduct periodic analyses and evaluations of the best scientific information in the area of smoking and other tobacco product use cessation; and

''(2) the development and dissemination of special programs in cessation intervention for health plans and national health professional societies.''.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) IN GENERAL.—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, 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 25 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.

''(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 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) 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 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.

''(4) 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.''.

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking ''(a) ADDITIONAL STATEMENTS.—'' IN SUBSECTION (A); AND

(2) by striking subsection (b).

SEC. 302. 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 301 of this title, 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 warning label statements required by subsection (a) of this section, 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. 303. 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, 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 25 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.

''(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.

''(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. 304. 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 303 of this title, 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 warning label statements required by subsection (a) of this section, 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. 305. 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 301 of this title, 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 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.).''.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—There is established in the Treasury of the United States a trust fund to be known as the ''National Tobacco Trust Fund'', consisting of such amounts as may be appropriated or credited to the trust fund.

(b) TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—There shall be credited to the trust fund the net revenues resulting from the following amounts:

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

(3) Amounts equal to penalties paid under section 202, including interest thereon.

(c) NET REVENUES.—For purposes of subsection (b), the term ''net revenues'' means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers, subject to the provisions of title XIV, shall deposit into the National Tobacco Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Phillip Morris Incorporated—65.8 percent.

(B) Brown and Williamson Tobacco Corporation—17.3 percent.

(C) Lorillard Tobacco Company—7.1 percent.

(D) R.J. Reynolds Tobacco Company—6.6 percent.

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER TOBACCO PRODUCT MANUFACTURERS.—No other tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of compliance with this Act and shall owe interest on such payment at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.

(2) year 2—$15,400,000,000.

(3) year 3—$17,700,000,000.

(4) year 4—$21,400,000,000.

(5) year 5—$23,600,000,000.

(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is

the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term ''base volume'' means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term ''actual volume'' means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

Each tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer under this Act for the year in which the sale occurs.

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to make a payment required under section 402 or 404, the period—

(1) beginning on the due date for such payment; and

(2) ending on the date on which such payment is paid in full.

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 402 if—

(A) such failure was due to reasonable cause and not to willful neglect; and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 402 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

Subtitle B—General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excees of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act. authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.— There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV–B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.— Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) OPTIONS FOR CHILDREN'S HEALTH OUTREACH.—In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) EXPANSION OF PRESUMPTIVE ELIGIBILITY OPTION FOR CHILDREN.—

(A) IN GENERAL.—Section 1920A(b)(3)(A)(I) of the Social Security Act (42 U.S.C. 1396r–1a(b)(3)(A)(I)) is amended—

(i) by striking ''described in subsection (a) or (II) is authorized'' and inserting ''described in subsection (a), (II) is authorized''; and

(ii) by inserting before the semicolon '', eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State''.

(B) TECHNICAL AMENDMENTS.—Section 1920A of that Act (42 U.S.C. 1396r–1a) is amended—

(i) in subsection (b)(3)(A)(ii), by striking ''paragraph (1)(A)'' and inserting ''paragraph (2)(A)''; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(2)(A)''.

(2) REMOVAL OF REQUIREMENT THAT CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS BE REDUCED BY COSTS RELATED TO PRESUMPTIVE ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking ''the sum of—'' and all that follows through the paragraph designation ''(2)'' and merging all that remains of subsection (d) into a single sentence.

(B) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) INCREASED FUNDING FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u–1(h)) is amended—

(A) by striking the subsection caption and inserting ''(h) INCREASED FEDERAL MATCHING RATE FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—'';

(B) in paragraph (2), by striking ''eligibility determinations'' and all that follows and inserting ''determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach- and eligibility-related activities as the Secretary may approve.'';

(C) in paragraph (3), by striking ''and ending with fiscal year 2000 shall not exceed $500,000,000'' and inserting ''shall not exceed $525,000,000''; and

(D) by striking paragraph (4).

(g) PERIODIC REASSESSMENT OF SPENDING OPTIONS.—Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

SEC. 453. INDIAN HEALTH SERVICE.

Amounts available under section 451(b)(2)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

(1) clinic and facility design, construction, repair, renovation, maintenance and improvement;

(2) provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement; and

(4) other programs and service provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDATION.

Amounts available under section 451(c)(2)(C) shall be made available for necessary expenses in carry out the National Science Foundation Act of 1950 (U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881).

SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT; EVALUATION AND REPORT TO CONGRESS.

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the Medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the Medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute,

with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRIALS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, the term ''routine patient care costs'' include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the Medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this section, the term ''routine patient care costs'' does not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

(e) STUDY.—The Secretary shall study the impact on the Medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(f) REPORT TO CONGRESS.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains a detailed description of the results of the study conducted under subsection (e) including recommendations regarding the extension and expansion of the demonstration project conducted under this section.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term ''public facility'' means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or the executive, legislative, or judicial branch of the United States Government.

(B) EXCLUSIONS.—The term ''public facility'' does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT DEFINED.—The term ''fast food restaurant'' means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering to individuals under 18 years of age is achieved.

(3) RESPONSIBLE ENTITY.—The term ''responsible entity'' means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee if the lessee is actively engaged in supervising day-to-day activity in the leased space.

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

(a) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) ELEMENTS OF POLICY.—

(1) IN GENERAL.—The responsible entity for a public facility shall—

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

(2) EXCEPTION.—The responsible entity for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).

(c) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking

area meets the requirements of this subsection if—

(1) the area is ventilated in accordance with specifications promulgated by the Assistant Secretary that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Assistant Secretary;

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area; and

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. CITIZEN ACTIONS.

(a) IN GENERAL.—An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Assistant Secretary.

(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

(c) NOTICE.—An aggrieved person shall give any alleged violator notice at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) COSTS.—The court, in issuing any final order in any action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) PENALTIES.—The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Assistant Secretary in exercising such discretion and selecting any such projects.

(f) APPLICATION WITH OSHA.—Nothing in this section affects enforcement of the Occupational Safety and Health Act of 1970.

SEC. 504. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State, or local law which provides greater protection from health hazards from environmental tobacco smoke.

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations, after consulting with the Administrator of the Environmental Protection Agency, as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

Any State or local government may opt out of this title by promulgating a State or local law, subject to certification by the Assistant Secretary that the law is as or more protective of the public's health as this title, based on the best available science. Any State or local government may opt to enforce this title itself, subject to certification by the Assistant Secretary that the enforcement mechanism will effectively protect the public health.

TITLE VI—APPLICATION TO INDIAN TRIBES

SEC. 601. SHORT TITLE.

This title may be cited as the ''Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998''.

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSE.—It is the purpose of this title to—

(1) provide for the implementation of this Act with respect to the regulation of tobacco products, and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act shall apply to the manufacture, distribution, and sale of tobacco or tobacco products on Indian lands, including such activities of an Indian tribe or member of such tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to permit an infringement upon upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco product for such purposes, or to infringe upon the ability of minors to participate and use tobacco products for such religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general manufacture, distribution, sale or use of tobacco or tobacco products in a manner that is not in compliance with this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

(c) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2341 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(d) APPLICATION ON INDIAN LANDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations to implement this section as necessary to apply this Act and the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to tobacco products manufactured, distributed, or sold on Indian lands.

(2) SCOPE.—This Act and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall apply to the manufacture, distribution and sale of tobacco products on Indian lands, including such activities by Indian tribes and members of such tribes.

(3) TRIBAL TOBACCO RETAILER LICENSING PROGRAM.—

(A) IN GENERAL.—The requirements of this Act with respect to the licensing of tobacco retailers shall apply to all retailers that sell tobacco or tobacco products on Indian lands, including Indian tribes, and members thereof.

(B) IMPLEMENTATION.—

(i) IN GENERAL.—An Indian tribe may implement and enforce a tobacco retailer licensing and enforcement program on its Indian lands consistent with the provisions of section 231 if the tribe is eligible under subparagraph (D). For purposes of this clause, section 231 shall be applied to an Indian tribe by substituting ''Indian tribe'' for ''State'' each place it appears, and an Indian tribe shall not be ineligible for grants under that section if the Secretary applies that section to the tribe by modifying it to address tribal population, land base, and jurisdictional factors.

(ii) COOPERATION.—An Indian tribe and State with tobacco retailer licensing programs within adjacent jurisdictions should consult and confer to ensure effective implementation of their respective programs.

(C) ENFORCEMENT.—The Secretary may vest the responsibility for implementation and enforcement of a tobacco retailer licensing program in—

(i) the Indian tribe involved;

(ii) the State within which the lands of the Indian tribe are located pursuant to a voluntary cooperative agreement entered into by the State and the Indian tribe; or

(iii) the Secretary pursuant to subparagraph (F).

(D) ELIGIBILITY.—To be eligible to implement and enforce a tobacco retailer licensing program under section 231, the Secretary, in consultation with the Secretary of Interior, must find that—

(i) the Indian tribe has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(ii) the functions to be exercised relate to activities conducted on its Indian lands; and

(iii) the Indian tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(E) DETERMINATIONS.—Not later than 90 days after the date on which an Indian tribe submits an application for authority under subparagraph (D), the Secretary shall make a determination concerning the eligibility of such tribe for such authority. Each tribe found eligible under subparagraph (D) shall be eligible to enter into agreements for block grants under section 231, to conduct a licensing and enforcement program pursuant to section 231, and for bonuses under section 232.

(F) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer a retail licensing and enforcement program, the Secretary, in consultation with the Secretary of Interior, shall promulgate regulations for a program for such tribes in the same manner as for States which have not established a tobacco retailer licensing program under section 231(f).

(G) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—

(i) If the Secretary determines under subparagraph (F) that a Indian tribe is not eligible to establish a tobacco retailer licensing program, the Secretary shall—

(I) submit to such tribe, in writing, a statement of the reasons for such determination of ineligibility; and

(II) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

(ii) After an opportunity to review and cure such deficiencies, the tribe may reapply to the Secretary for assistance under this subsection.

(H) SECRETARIAL REVIEW.—The Secretary may periodically review the tribal tobacco retailer licensing program of a tribe approved pursuant to subparagraph (E), including the effectiveness of the program, the tribe's enforcement thereof, and the compatibility of the tribe's program with the program of the State in which the tribe is located. The program shall be subject to all applicable requirements of section 231.

(e) ELIGIBILITY FOR PUBLIC HEATH FUNDS.—

(1) ELIGIBILITY FOR GRANTS.—

(A) For each fiscal year the Secretary may award grants to Indian tribes from the federal Account or other federal funds, except a tribe that is not a participating tobacco product manufacturer (as defined in section 1402(a), for the same purposes as States and local governments are eligible to receive grants from the Federal Account as provided for in this Act. Indian tribes shall have the flexibility to utilize such grants to meet the unique health care needs of their service populations consistent with the goals and purposes of Federal Indian health care law and policy.

(B) In promulgating regulations for the approval and funding of smoking cessation programs under section 221 the Secretary shall ensure that adequate funding is available to address the high rate of smoking among Native Americans.

(2) HEALTH CARE FUNDING.—

(A) INDIAN HEALTH SERVICE.—Each fiscal year the Secretary shall disburse to the Indian Health Service from the National Tobacco Settlement Trust Fund an amount determined by the Secretary in consultation with the Secretary of the Interior equal to the product of—

(i) the ratio of the total Indian health care service population relative to the total population of the United States; and

(ii) the amount allocated to the States each year from the State Litigation Trust Account.

(B) FUNDING.—The trustees of the Trust Fund shall for each fiscal year transfer to the Secretary from the State Litigation Trust Account the amount determined pursuant to paragraph (A).

(C) USE OF HEALTH CARE TRUST FUNDS.—Amounts made available to the Indian Health Service under this paragraph shall be made available to Indian tribes pursuant to the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), shall be used to reduce tobacco consumption, promote smoking cessation, and shall be used to fund health care activities including—

(i) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(ii) health care provider services and equipment;

(iii) domestic and community sanitation associated with clinic and facility construction and improvement;

(iv) inpatient and outpatient services; and

(v) other programs and services which have as their goal raising the health status of Indians.

(f) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe from imposing requirements, prohibitions, penalties, or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required by this Act.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazard of environmental tobacco smoke.

(g) DISCLAIMER.—Nothing in this Act shall be construed to increase or diminish tribal or State jurisdiction on Indian lands with respect to tobacco-related activities.

TITLE VII—TOBACCO CLAIMS

SEC. 701. DEFINITIONS.

In this title:

(1) AFFILIATE.—The term ''affiliate'' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and person means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) CIVIL ACTION.—The term ''civil action'' means any action, lawsuit, or proceeding that is not a criminal action.

(3) COURT.—The term ''court'' means any judicial or agency court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(4) FINAL JUDGMENT.—The term ''final judgment'' means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(5) FINAL SETTLEMENT.—The term ''final settlement'' means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(6) INDIVIDUAL.—The term ''individual'' means a human being and does not include a corporation, partnership, unincorporated association, trust, estate, or any other public or private entity, State or local government, or Indian tribe.

(7) TOBACCO CLAIM.—The term ''tobacco claim'' means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(8) TOBACCO PRODUCT MANUFACTURER.—The term ''tobacco product manufacturer'' means a person who—

(A) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(B) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(C) engaged in activities described in subparagraph (A) or (B) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a tobacco product manufacturer in which the tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(D) is a successor or assign of any of the foregoing;

(E) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; or

(F) is an affiliate of a tobacco product manufacturer.

(9) CASTANO CIVIL ACTIONS.—The term ''Castano Civil Actions'' means the following civil actions: Gloria Wilkinson Lyons et al. v. American Tobacco Co., et al. (USDC Alabama 96–0881–BH; Agnes McGinty, et al. v. American Tobacco Co., et al. (USDC Arkansas LR–C–96–881); Willard R. Brown, et al. v. R.J. Reynolds Co., et al. (San Diego, California–00711400); Gray Davis & James Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San Diego, California–00706458); Chester Lyons, et al. v. Brown & Williamson Tobacco Corp., et al. (Fulton County, Georgia–E–59346); Rosalyn Peterson, et al. v. American Tobacco Co., et al. (USDC Hawaii–97–00233–HG); Jean Clay , et al. v. American Tobacco Co., et al. (USDC Illinois Benton Division–97–4167–JPG); William J. Norton, et al. v. RJR Nabisco Holdings Corp., et al. (Madison County, Indiana 48D01–9605–CP–0271); Alga Emig, et al. v. American Tobacco Co., et al. (USDC Kansas–97–1121–MLB); Gloria Scott, et al. v. American Tobacco Co., et al. (Orleans Parish, Louisiana–97–1178); Vern Masepohl, et al. v. American Tobacco Co., et al. (USDC Minnesota–3–96–CV–888); Matthew Tepper, et al. v. Philip Morris Incorporated, et al (Bergen County, New Jersey–BER–L–4983–97–E); Carol A. Connor, et al. v. American Tobacco Co., et al. (Bernalillo County, New Mexico–CV96–8464); Edwin Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co., et al.; Josephine Stewart–Lomantz v. Brown & Williamson Tobacco, et al.; Rose Frosina, et al. v. Philip Morris Incorporated, et al.; Catherine Zito, et al. v. American Tobacco Co., et al.; Kevin Mroczkowski, et al. v. Lorillard Tobacco Company, et al. (Supreme Court, New York County, New York–110949 thru 110953); Judith E. Chamberlain, et al. v. American Tobacco Co., et al. (USDC Ohio–1:96CV2005); Brian walls, et al. v. American Tobacco Co., et al. (USDC Oklahoma–97–CV–218–H); Steven R. Arch, et al. v. American Tobacco Co., et al. (USDC Pennsylvania–96–5903–CN); Barreras-Ruiz, et al. v. American Tobacco Co., et al. (USDC Puerto Rico–96–2300–JAF); Joanne Anderson, et al. v. American Tobacco Co., et al. (Know County, Tennessee); Carlis Cole, et al. v. The Tobacco institute, Inc., et al. (USDC Beaumont Texas Division–1:97CV0256); Carrol Jackson, et al. v. Philip Morris Incorporated, et al. (Salt Lake County, Utah–CV No. 98–0901634PI).

SEC. 702. APPLICATION; PREEMPTION.

(a) APPLICATION.—The provisions of this title govern any tobacco claim in any civil action brought in an State, Tribal, or Federal court, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act.

(b) PREEMPTION.—This title supersedes State law only to the extent that State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable State, Tribal, or Federal law.

(c) CRIMINAL LIABILITY UNTOUCHED.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or their officers, directors, employees, successors, or assigns.

SEC. 703. RULES GOVERNING TOBACCO CLAIMS.

(a) GENERAL CAUSATION PRESUMPTION.—In any civil action to which this title applies brought involving a tobacco claim, there shall be an evidentiary presumption that nicotine is addictive and that the diseases

identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (hereinafter referred to as the ''general causation presumption''), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. This general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(b) ACTIONS AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—In any civil action brought involving a tobacco claim against participating tobacco product manufacturers, as that term is defined in title XIV, the provisions of title XIV apply in conjunction with the provisions of this title.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVERSIGHT OF THE TOBACCO INDUSTRY.

(a) ACCOUNTABILITY.—The Secretary, following regular consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health shall annually issue a report as provided for in subsection (c).

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Secretary a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The annual report of the Secretary may recommend amendment of any plan to incorporate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The Secretary shall submit a report to the Congress by January 31 of each year, which shall be published in the Federal Register. The report shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connection with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a *prima facie* showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

(1) the American tobacco industry has made claims of attorney-client privilege, attorney work product, and trade secrets to protect from public disclosure thousands of internal documents sought by civil litigants;

(2) a number of courts have found that these claims of privilege were not made in good faith; and

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title applies to all tobacco product manufacturers.

SEC. 903. DOCUMENT DISCLOSURE.

(a) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—

(1) Within 60 days after the date of enactment of this Act, each tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in subsection (c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with subsection (b). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under subsection (b).

(2) With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the process established by section 905.

(3) If a document depository is not established under title XIV, the Secretary shall establish by regulation a procedure for making public all documents submitted under paragraph (1) except documents for which trade secret protection has been claimed and for which there has not been a final judicial determination that the document does not contain a trade secret.

(b) SEPARATE SUBMISSION OF DOCUMENTS.—

(1) PRIVILEGED TRADE SECRET DOCUMENTS.—Any document required to be submitted under subsection (c) or (d) that is subject to a claim by a tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted to the panel under section 904 within 30 days after its appointment. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(2) PRIVILEGE AND TRADE SECRET LOGS.—

(A) IN GENERAL.—Within 15 days after submitting documents under paragraph (1), each tobacco product manufacturer shall submit a comprehensive log which identifies on a document-by-document basis all documents produced for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith *de novo* review of such documents to determine whether such privilege or trade secret protection is appropriate.

(B) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(i) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(ii) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(iii) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(C) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(3) DECLARATION OF COMPLIANCE.—Each tobacco product manufacturer shall submit to the Depository a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the *de novo* review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this subsection pertaining to the review of documents and preparation of a privilege log.

(c) DOCUMENT CATEGORIES.—Each tobacco product manufacturer shall submit—

(1) every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) all documents produced by any tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the ''Joe Camel'' advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181–00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94–5–53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84–CV–678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83–CV–284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the Depository by tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith *de novo* re-review conducted after the date of enactment of this Act is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(d) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the tobacco product manufacturers and their trade associations shall—

(1) place the documents in the depository; and

(2) provide a copy of the documents to the Food and Drug Administration (with the exception of documents subject to a claim of attorney-client privilege or attorney work product).

(1) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control—

(A) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative; and

(B) that the panel established under section 906 determines is appropriate for submission.

(3) All studies conducted or funded, directly or indirectly, by any tobacco product manufacturer, relating to tobacco product use by minors.

(4) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(5) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer maintains is exempt from public disclosure under this title.

(6) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(e) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted under this section shall be sequentially numbered and marked to identify the tobacco product manufacturer. Within 15 days after submission of documents, each tobacco product manufacturer shall supply the panel with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. DOCUMENT REVIEW.

(a) ADJUDICATION OF PRIVILEGE CLAIMS.—An claim of attorney-client privilege, trade secret protection, or other claim of privilege with respect to a document required to be submitted by this title shall be heard by a 3-judge panel of the United States District Court for the District of Columbia under section 2284 of title 28, United States Code. The panel may appoint special masters, employ such personnel, and establish such procedures as it deems necessary to carry out its functions under this title.

(b) PRIVILEGE.—The panel shall apply the attorney-client privilege, the attorney work-product doctrine, and the trade secret doctrine in a manner consistent with Federal law.

SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The panel shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted. Any person may petition the panel to resolve a claim that a document submitted may not be disclosed to the public. Such a determination shall be made by a majority of the panel, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The panel shall cause notice of the petition and the panel's decision to be published in the Federal Register.

(b) FINAL DECISION.—The panel may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the panel shall be final unless judicial review is sought under section 906. In the event that judicial review is so sought, the panel's decision shall be stayed pending a final judicial decision.

SEC. 906. APPEAL OF PANEL DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the panel by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the panel. The panel shall file in the court the record of the proceedings on which the panel based its decision (including any documents reviewed by the panel in *camera*) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the panel's decision, except that until the filing of the record the panel may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the panel, the court may order the panel to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The panel may modify its findings or make new findings by reason of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The panel's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the panel's legal conclusions *de novo*. The judgment of the court affirming or setting aside the panel's decision 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) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the panel or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the panel shall direct that the document be made available to the Commissioner of Food and Drugs under section 903(a). No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The panel's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the panel shall not be construed to prevent a document from being disclosed in a judicial proceeding or interfere with the authority of a court to determine whether a document is admissible or whether its production may be compelled.

SEC. 907. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 908. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each tobacco product manufacturer shall act in good faith in asserting claims of privilege or trade secret protection based on fact and law. If the panel determines that a tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the panel and any party contesting the privilege. The panel may also impose civil penalties of up to $50,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the panel's determination of privilege, attorney work product, or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the panel, shall be punished by a civil penalty of up to $50,000 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $5,000,000. In determining the amount of any civil penalty, the panel shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 909. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term ''document'' includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph,

blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term ''trade secret'' means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a ''proceeding'' before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Long-Term Economic Assistance for Farmers Act'' or the ''LEAF Act''.

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term ''participating tobacco producer'' means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term ''quota holder'' means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term ''quota lessee'' means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term ''quota tenant'' means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term ''Secretary'' means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term ''tobacco product importer'' has the meaning given the term ''importer'' in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term ''tobacco product manufacturer'' has the meaning given the term ''manufacturer of tobacco products'' in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term ''tobacco product manufacturer'' does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term ''tobacco warehouse owner'' means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term ''flue-cured tobacco'' includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount

payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing

year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUECURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies

in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term ''tobacco-growing county'' includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking ''(c) Within thirty'' and inserting the following:

''(c) REFERENDA ON QUOTAS.—

''(1) IN GENERAL.—Not later than 30''; and

(2) by adding at the end the following:

''(2) REFERENDA ON PROGRAM CHANGES.—

''(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

''(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.''.

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking ''(c) The amount'' and inserting ''(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount''; and

(B) by striking paragraph (1) and inserting the following:

''(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and''.

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking ''section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)'' and inserting ''section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)''.

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

''(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.''.

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking ''ten'' and inserting ''30''; and

(B) by inserting ''during any crop year'' after ''transferred to any farm''.

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

''(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.''.

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured quota tobacco''; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking ''Flue-cured or Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''; and

(ii) by striking subclause (II) and inserting the following:

''(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and''.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured tobacco''; and

(B) in subparagraph (C), by striking ''Flue-cured and Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term ''contributed importantly'' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October l, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Farmer Opportunity Grants

''SEC. 420D. STATEMENT OF PURPOSE.

''It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

''SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

''(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

''(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay

eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

''(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

''(b) AMOUNT OF GRANTS.—

''(1) AMOUNTS.—

''(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

''(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

''(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

''(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

''(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

''(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

''(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

''(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

''(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

''(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

''(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to—

''(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

''(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

''(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

''(d) APPLICATIONS FOR GRANTS.—

''(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

''(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

''(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

''(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

''(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

''SEC. 420F. STUDENT ELIGIBILITY.

''(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

''(1) be a member of a tobacco farm family in accordance with subsection (b);

''(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

''(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

''(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

''(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

''(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

''(B) the student's social security number; and

''(6) be a citizen of the United States.

''(b) TOBACCO FARM FAMILIES.—

''(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

''(A) an individual who—

''(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act); or

''(ii) is otherwise actively engaged in the production of tobacco;

''(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

''(C) an individual—

''(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

''(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

''(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

''(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

''(c) SATISFACTORY PROGRESS.—

''(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

''(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

''(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

''(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

''(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

''(A) the death of a relative of the student;

''(B) the personal injury or illness of the student; or

''(C) special circumstances as determined by the institution.

''(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

''(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

''(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

''(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

''(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

''(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

''(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

''(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

''(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

''(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

''(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

''(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

''(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

''(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.''.

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

SEC. 1042. ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, from amounts made available under section 1012(3)(A), the Secretary shall use up to $250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income during any of the 1997 through 2004 crop years, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

(c) EFFECT ON OTHER PAYMENTS.—The amount available in section 1012(3)(A) for tobacco community economic development grants under section 1023 shall be reduced by any amount appropriated under this section. None of the payments made under this section shall limit or alter in any manner the payments authorized under section 1021 of this Act.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

(1) restrict or eliminate tobacco advertising and promotion aimed at children;

(2) require effective warning labels on packages and advertisements of tobacco products;

(3) require disclosure of tobacco ingredient information to the public;

(4) limit access to tobacco products by young people;

(5) reduce smuggling of tobacco and tobacco products;

(6) ensure public protection from environmental tobacco smoke; and

(7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.

The President, in consultation with the Secretary of State, the Secretary of Health and Human Services, and the United States Trade Representative, shall—

(1) act as the lead negotiator for the United States in the area of international tobacco control;

(2) coordinate among U.S. foreign policy and trade negotiators in the area of effective international tobacco control policy;

(3) work closely with non-governmental groups, including public health groups; and

(4) report annually to the Congress on the progress of negotiations to achieve effective international tobacco control policy.

SEC. 1103. REPORT TO CONGRESS.

Not later than 150 days after the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall transmit to the Congress a report identifying the international fora wherein international tobacco control efforts may be negotiated.

SEC. 1104. FUNDING.

There are authorized such sums as are necessary to carry out the provisions of this subtitle.

SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, unless such restrictions are not applied equally to all tobacco and tobacco products. The United States Trade Representative shall consult with the Secretary regarding inquiries, negotiations, and representations with respect to tobacco and tobacco products, including whether proposed restrictions are reasonable protections of public health.

(b) NOTIFICATION.—Whenever such inquiries, negotiations, or representations are made, the United States Trade Representative shall notify the Congress within 10 days afterwards regarding the nature of the inquiry, negotiation, or representation.

SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR EXPORT.

(a) IN GENERAL.—

(1) EXPORTS MUST BE LABELED.—It shall be unlawful for any United States person, directly or through approval or facilitation of a transaction by a foreign person, to make use of the United States mail or of any instrument of interstate commerce to authorize or contribute to the export from the United States any tobacco product unless the tobacco product packaging contains a warning label that—

(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

(B) complies with the specific health hazard warning labeling requirements of the foreign country to which the product is exported.

(2) U.S. REQUIREMENTS APPLY IF THE DESTINATION COUNTRY DOES NOT REQUIRE SPECIFIC HEALTH HAZARD WARNING LABELS.—Subparagraph (B) of paragraph (1) does not apply to exports to a foreign country that does not have any specific health hazard warning label requirements for the tobacco product being exported.

(b) UNITED STATES PERSON DEFINED.—For purposes of this section, the term ''United States person'' means—

(1) an individual who is a citizen, national, or resident of the United States; and

(2) a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States.

(c) REPORT TO CONGRESS ON ENFORCEMENT; FEASIBILITY REGULATIONS.—

(1) THE PRESIDENT.—The President shall—

(A) report to the Congress within 90 days after the date of enactment of this Act—

(i) regarding methods to ensure compliance with subsection (a); and

(ii) listing countries whose health warnings related to tobacco products are substantially similar to those in the United States; and

(B) promulgate regulations within 1 year after the date of enactment of this Act that will ensure compliance with subsection (a).

(2) THE SECRETARY.—The Secretary shall determine through regulation the feasibility and practicability of requiring health warning labeling in the language of the country of destination weighing the health and other benefits and economic and other costs. To the greatest extent practicable, the Secretary should design a system that requires the language of the country of destination while minimizing the dislocative effects of such a system.

SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARENESS.

(a) ESTABLISHMENT OF INTERNATIONAL TOBACCO CONTROL AWARENESS.—The Secretary is authorized to establish an international tobacco control awareness effort. The Secretary shall—

(1) promote efforts to share information and provide education internationally about the health, economic, social, and other costs of tobacco use, including scientific and epidemiological data related to tobacco and tobacco use and enhancing countries' capacity to collect, analyze, and disseminating such data;

(2) promote policies and support and coordinate international efforts, including international agreements or arrangements, that seek to enhance the awareness and understanding of the costs associated with tobacco use;

(3) support the development of appropriate governmental control activities in foreign countries, such as assisting countries to design, implement, and evaluate programs and policies used in the United States or other countries; including the training of United States diplomatic and commercial representatives outside the United States;

(4) undertake other activities as appropriate in foreign countries that help achieve a reduction of tobacco use;

(5) permit United States participation in annual meetings of government and non-government representatives concerning international tobacco use and efforts to reduce tobacco use;

(6) promote mass media campaigns, including paid counter-tobacco advertisements to reverse the image appeal of pro-tobacco messages, especially those that glamorize and ''Westernize'' tobacco use to young people; and

(7) create capacity and global commitment to reduce international tobacco use and prevent youth smoking, including the use of models of previous public health efforts to address global health problems.

(b) ACTIVITIES.—

(1) IN GENERAL.—The activities under subsection (a) shall include—

(A) public health and education programs;

(B) technical assistance;

(C) cooperative efforts and support for related activities of multilateral organization and international organizations;

(D) training; and

(E) such other activities that support the objectives of this section as may be appropriate.

(2) GRANTS AND CONTRACTS.—In carrying out this section, the Secretary shall make grants to, enter into and carry out agreements with, and enter into other transactions with any individual, corporation, or other entity, whether within or outside the United States, including governmental and nongovernmental organizations, international organizations, and multilateral organizations.

(3) TRANSFER OF FUNDS TO AGENCIES.—The Secretary may transfer to any agency of the United States any part of any funds appropriated for the purpose of carrying out this section. Funds authorized to be appropriated by this section shall be available for obligation and expenditure in accordance with the provisions of this section or in accordance with the authority governing the activities of the agency to which such funds are transferred.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the National Tobacco Trust Fund, to carry out the provisions of this section, including the administrative costs incurred by any agency of the United States in carrying out this section, $350,000,000 for each of the fiscal years 1999 through 2004, and such sums as may be necessary for each fiscal year thereafter. A substantial amount of such funds shall be granted to non-governmental organizations. Any amount appropriated pursuant to this authorization shall remain available without fiscal year limitation until expended.

Subtitle B—Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms ''cigar'', ''cigarette'', ''person'', ''pipe tobacco'', ''roll-your-own tobacco'', ''smokeless tobacco'', ''State'', ''tobacco product'', and ''United States'', shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term ''interstate or foreign commerce'' means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(4) PACKAGE.—The term ''package'' means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term ''retailer'' means any dealer who sells, or offers for sale, any tobacco product at retail. The term ''retailer'' includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or it equivalent for other tobacco products.

(6) EXPORTER.—The term ''exporter'' means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term ''licensed exporter'' means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an ''exporter'' under this subtitle.

(7) IMPORTER.—The term ''importer'' means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term ''licensed importer'' means any such person licensed under the provisions of this subtitle.

(8) INTENTIONALLY.—The term ''intentionally'' means doing an act, or omitting to do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) MANUFACTURER.— The term ''manufacturer'' means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term ''licensed manufacturer'' means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) WHOLESALER.—The term ''wholesaler'' means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term ''licensed wholesaler'' means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) MARKING REQUIREMENTS FOR EXPORTS.—Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of

compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) ELIGIBILITY.—A person is entitled to a license unless the Secretary finds—

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) CONDITIONS.—The issuance of a license under this section shall be conditioned upon the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title 18, United States Code, and any regulations issued pursuant to such statutes.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) IMPORTATION AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) MANUFACTURE AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) WHOLESALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) EXPORTATION.—

(1) IN GENERAL.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) REPORT.—Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in—

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) UNLAWFUL ACTS.—

(1) UNLICENSED RECEIPT OR DELIVERY.—It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) RECEIPT OF RE-IMPORTED GOODS.—It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) DELIVERY BY EXPORTER.—It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) SHIPMENT OF EXPORT-ONLY GOODS.—It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked ''FOR EXPORT FROM THE UNITED STATES,'' other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) FALSE STATEMENTS.—It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(f) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) MANUFACTURE OF TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.—No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) EXPORTING OR IMPORTING FROM OR INTO A FOREIGN TRADE ZONE.—Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) CIVIL PENALTIES.—The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than $10,000 for each offense.

(d) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) FORFEITURE.—

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or

personal, which constitutes or is derived from proceeds traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) by striking ''60,000'' and inserting ''30,000'' in paragraph (2);

(2) by inserting after ''payment of cigarette taxes,'' in paragraph (2) the following: ''or in the case of a State that does not require any such indication of tax payment, if the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,'';

(3) by striking ''and'' at the end of paragraph (4);

(4) by striking ''Treasury.'' in paragraph (5) and inserting ''Treasury;''; and

(5) by adding at the end thereof the following:

''(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

''(7) the term 'contraband tobacco product' means—

''(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

''(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.''.

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) by inserting ''or contraband tobacco products'' before the period in subsection (a); and

(2) by adding at the end thereof the following:

''(c) It is unlawful for any person—

''(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

''(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

''(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading.''.

(c) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking ''60,000'' in subsection (a) and inserting ''30,000'';

(2) by inserting after ''transaction'' in subsection (a) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,'';

(3) by striking the last sentence of subsection (a) and inserting the following: ''Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.'';

(4) by striking ''60,000'' in subsection (b) and inserting ''30,000'';

(5) by inserting after ''transaction'' in subsection (b) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,''; and

(6) by adding at the end thereof the following:

''(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall—

''(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any other place of business; and

''(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

''(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

''(3) For purposes of this subsection—

''(A) the term 'use' includes consumption, storage, handling, or disposal of tobacco products; and

''(B) the term 'tobacco tax administrator' means the State official authorized to administer tobacco tax laws of the State.''.

(e) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) by inserting ''or (c)'' in subsection (b) after ''section 2344(b)'';

(2) by inserting ''or contraband tobacco products'' after ''cigarettes'' in subsection (c); and

(3) by adding at the end thereof the following:

''(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).''.

(f) REPEAL OF FEDERAL LAW RELATING TO COLLECTION OF STATE CIGARETTE TAXES.—The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) LICENSE FEES.—The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) DISPOSITION OF FEES.—Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

Subtitle C—Other Provisions

SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund such sums as may be necessary for each fiscal year to be used by the Secretary for the following purposes:

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed, subject to the availability of appropriations under subsection (d), for the fair market value of their tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the ''Corporation''). Except as otherwise provided in this section, the Corporation is subject to, and has all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29–501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary in an amount determined by the President of the Corporation not to exceed $40,000 individually, out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and reasonable; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds appropriated to the Corporation under subsection (d) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 1 percent of the total amount appropriated to the Corporation under subsection (d).

(B) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(C) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Corporation from funds not otherwise obligated in the Treasury or out of the National Tobacco Trust Fund, such sums as may be necessary to carry out this section.

SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

''SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

''(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

''(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(d) NO AUTHORIZATION REQUIRED.—

''(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

''(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

''(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

''(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(g) PREEMPTION, RELATION TO STATE LAWS.—

''(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

''(A) such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection of breast cancer;

''(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

''(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

''(2) APPLICATION OF SECTION.—With respect to a State law—

''(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

''(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

''(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE UNDER FUTURE LEGISLATION.

If the Congress enacts qualifying legislation after the date of enactment of this Act to provide for the payment of asbestos claims, then amounts in the National Tobacco Trust Fund established by title IV of this Act set aside for public health expenditures shall be available, as provided by appropriation Acts, to make those payments. For purposes of this section, the term ''qualifying legislation'' means a public law that amends this Act and changes the suballocations of funds set aside for public health expenditures under title IV of this Act to provide for the payment of those claims.

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

''PART VII—RECOVERY OF COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

''CHAPTER 91—TORT LIABILITY FOR DISABILITY, INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

''Sec.
''9101. Recovery by Secretary of Veterans Affairs
''9102. Regulations
''9103. Limitation or repeal of other provisions for recovery of compensation
''9104. Exemption from annual limitation on damages

''§ 9101. Recovery by Secretary of Veterans Affairs

''(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation and medical care services under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service under circumstances creating a tort liability upon a tobacco product manufacturer (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said tobacco product manufacturer the cost of the compensation paid or to be paid and the costs of medical care services provided, and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid and the costs of medical services provided.

''(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section—

''(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the tobacco product manufacturer who is liable for the injury or disease; or

''(2) if such action or proceeding is not commenced within 6 months after the first day on which compensation is paid, or the medical care services are provided, by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the tobacco product manufacturer who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

''(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid, and medical care services provided, by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

''§ 9102. Regulations

''(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION AND MEDICAL CARE SERVICES TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent, and medical care services provided to a veteran.

''(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

''(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

''(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation, or receipt of medical care services.

''(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

''§ 9103. Limitation or repeal of other provisions for recovery of compensation and medical care services

''This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation and medical care services described in section 9101 of this title.

''§ 9104. Exemption from annual limitation on damages

''Any amount recovered under section 9101 of this title for compensation paid or to be

paid, and the cost of medical care services provided, by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the tobacco product manufacturers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.''.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT TO TAKE ADDITIONAL MEASURES TO REDUCE YOUTH SMOKING

SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING TOBACCO PRODUCT MANUFACTURERS IN RETURN FOR THEIR ASSUMPTION OF SPECIFIC OBLIGATIONS.

Participating tobacco product manufacturers shall receive the benefits, and assume the obligations, set forth in this title.

SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFACTURER.

(a) IN GENERAL.—Except as provided in subsection (b), a tobacco product manufacturer that—

(1) executes a protocol with the Secretary of Health and Human Services that meets the requirements of sections 1403, 1404, and 1405; and

(2) makes the payment required under section 402(a)(1),

is, for purposes of this title, a participating tobacco products manufacturer.

(b) DISQUALIFICATION.—

(1) INELIGIBILITY.—Notwithstanding subsection (a), a tobacco product manufacturer may not become a participating tobacco products manufacturer if—

(A) the tobacco product manufacturer or any of its principal officers (acting in that official's corporate capacity), is convicted of—

(i) manufacturing or distributing misbranded tobacco products in violation of the criminal prohibitions on such misbranding established under section 301 or 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 or 333);

(ii) violating reporting requirements established under section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(iii) violating, or aiding and abetting the violation of chapter 114 of title 18, United States Code; or

(iv) violating Federal prohibitions on mail fraud, wire fraud, or the making of false statements to Federal officials in the course of making reports or disclosures required by this Act; or

(B) the tobacco product manufacturer, at the end of the 1-year period beginning on the date on which such manufacturer fails to make a required assessment payment under title IV of this Act, has not fully made such payment.

(2) DISQUALIFICATION.—A tobacco product manufacturer that has become a participating tobacco product manufacturer shall cease to be treated as a participating tobacco product manufacturer if—

(A) it, or any of its principal officers (acting in that official's corporate capacity) is convicted of an offense described in paragraph (1)(A); or

(B) it fails to make such a payment within the time period described in paragraph (1)(B).

(c) NON-PARTICIPATING TOBACCO MANUFACTURERS.—Any tobacco product manufacturer that—

(1) does not execute a protocol in accordance with subsection (a);

(2) fails to make the payment required by section 402(a)(1) (if applicable to that manufacturer);

(3) is not eligible, under subsection (b)(1), to become a participating tobacco product manufacturer; or

(4) ceases to be treated as a participating tobacco product manufacturer under subsection (b)(2),

is, for purposes of this title, a non-participating tobacco product manufacturer.

SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it—

(1) contains the provisions described in subsection (b); and

(2) is enforceable at law.

(b) REQUIRED PROVISIONS.—The protocol shall include the following provisions:

(1) The tobacco product manufacturer executing the protocol will not engage in any conduct that was, either on the date of enactment of this Act, or at any time after the date of enactment of this Act—

(A) prohibited by this Act;

(B) prohibited by any regulation promulgated by the Food and Drug Administration that applies to tobacco products; or

(C) prohibited by any other statute.

(2) The tobacco product manufacturer executing the protocol will contract with only such distributors and retailers who have operated in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products and who agree to comply with advertising and marketing provisions in paragraph (3).

(3) The tobacco product manufacturer executing the protocol will be bound in marketing tobacco products by the following provisions, whether or not these provisions have legal force and effect against manufacturers who are not signatories to the protocol—

(A) the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996, and which shall be adopted and incorporated as independent terms of the protocol;

(B) the requirements of section 1404; and

(C) the requirements of section 1405.

(4) The tobacco product manufacturer executing the protocol will make any payments to the National Tobacco Trust Fund in title IV that are required to be made under that title or in any other title of this Act.

(5) The tobacco product manufacturer executing the protocol will be bound by the provisions of title IV, and any other title of this Act with respect to payments required under title IV, without regard to whether those provisions have legal force and effect against manufacturers who have not become signatories.

(6) The tobacco product manufacturer executing the protocol will make the industry-wide and manufacturer-specific look-back assessment payments that may be required under title II.

(7) The tobacco product manufacturer executing the protocol will be bound by the provisions of title II that require a manufacturer to make look-back assessments, and any other title of this Act with respect to such assessments, without regard to whether such terms have legal force and effect against manufacturers who have not become signatories.

(8) The tobacco product manufacturer executing the protocol will, within 180 days after the date of enactment of this Act and in conjunction with other participating tobacco product manufacturers, establish a National Tobacco Document Depository in the Washington, D.C. area—

(A) that is not affiliated with, or controlled by, any tobacco product manufacturer;

(B) the establishment and operational costs of which are allocated among participating tobacco product manufacturers; and

(C) that will make any document submitted to it under title IX of this Act and finally determined not to be subject to attorney-client privilege, attorney work product, or trade secret exclusions, available to the public using the Internet or other means within 30 days after receiving the document.

(c) PROVISIONS APPLICABLE TO DOCUMENTS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository (or, to the alternative depository, if any, established by the Secretary by regulation under title IX of this Act) in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTISING REQUIREMENTS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it requires that—

(1) no tobacco product will be sold or distributed in the United States unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and on mass transit vehicles, and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(D) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(E) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the ''Internet''), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(F) use only black text on white background, other than—

(i) those locations other than retail stores where no person under the age of 18 is permitted or present at any time, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(G) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects;

(8) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of brand-name product

identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product; and

(5)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 1405. POINT-OF-SALE REQUIREMENTS.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it provides that, except as provided in subsection (b), point-of-sale advertising of any tobacco product in any retail establishment is prohibited.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—One point-of-sale advertisement may be placed in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be played or shown in, but not distributed, at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No tobacco product manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms ''point-of-sale advertisement'' and ''point-of-sale advertising'' mean all printed or graphical materials (other than a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco is offered for sale, sold, or otherwise distributed to consumers) bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1406. APPLICATION OF TITLE.

(a) IN GENERAL.—The provisions of this title apply to any civil action involving a tobacco claim brought pursuant to title VII of this Act, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, only if such claim is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(C) that is not itself a non-participating tobacco product manufacturer;

(3) a supplier of component or constituent parts of tobacco products—

(A) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(B) that is not itself a non-participating tobacco product manufacturer;

(4) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(5) an insurer of any person described in paragraph (1), (2), (3), or (4) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than those described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United State;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second-hand smoke; or

(7) brought against a supplier of a component or constituent part of a tobacco product, if the component or constituent part was sold after the date of enactment of this Act, and the supplier knew that the tobacco product giving rise to the claim would be manufactured in the United States by a non-participating tobacco product manufacturer.

SEC. 1407. GOVERNMENTAL CLAIMS.

(a) IN GENERAL.—Except as provided in subsection (b) and (c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof, or other entity acting in *parens patriae*, may file or maintain any civil action involving a tobacco claim against a participating tobacco product manufacturer.

(b) EFFECT ON EXISTING STATE SUITS OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State that has filed a civil action involving a tobacco claim against a participating tobacco product manufacturer may elect to settle such action against said tobacco product manufacturer. If a State makes such an election to enter into a settlement or a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the settlement or consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of such settlement or decree.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—Any State that does not make the election described in subsection (b) may continue its lawsuit, notwithstanding subsection (a) of this section. A State that does not make such an election shall not be eligible to receive payments from the trust fund in title IV.

(d) 30-DAY DELAY.—No settlement or consent decree entered into under subsection (b) may take effect until 30 days after the date of enactment of this Act.

(f) PRESERVATION OF INSURANCE CLAIMS.—

(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by title IV for any calendar year, then—

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

(i) beginning on the date of enactment of this Act; and

(ii) ending on the last day of that calendar year; and

(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.

SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.

(a) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(b) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil

liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions, as defined in section 1417(2), in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—If the Secretary determines under title II that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States District Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether a tobacco product manufacturer has shown, by a preponderance of the evidence that it—

(1) has complied substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has not taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(3) has used its best efforts to reduce underage tobacco use to a degree at least equal to the required percentage reductions.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that a tobacco product manufacturer has failed to make the showing described in subsection (c) then sections 1411 and 1412 of this Act do not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 1412 of this Act prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 1412 of this Act.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the manufacturer has shown by a preponderance of the evidence that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has used its best efforts to attain the required percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

SEC. 1410. PUBLIC HEALTH EMERGENCY.

If the Secretary, in consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health determines at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the Secretary may bring an action under section 1409 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Secretary has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) PERMISSIBLE DEFENDANTS.—In any civil action to which this title applies, tobacco claims may be filed or maintained only against—

(1) a participating tobacco product manufacturer; or

(2) a surviving entity established by a participating tobacco product manufacturer.

(b) ACTIONS INVOLVING PARTICIPATING AND NON-PARTICIPATING MANUFACTURERS.—In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer, shall require the jury to or shall itself apportion liability as between the participating tobacco product manufacturer and non-participating tobacco product manufacturers.

SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided in this section, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and any agreement incident thereto.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—

(1) IN GENERAL.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $8,000,000,000.

(2) IMPLEMENTATION.—The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way to ensure the fair and equitable payment of final judgments or final settlements on tobacco claims under this title. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(3) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—The amount in paragraph (1) shall be increased annually, beginning with the second calendar year beginning after the date of enactment of this Act, by the greater of 3 percent or the annual increase in the CPI.

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act.

(f) BANKRUPTCY OF PARTICIPATING MANUFACTURER.—No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation , interest, or debt of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, discharged, or otherwise modified or diminished in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law. A trustee or receiver in any proceeding under title 11, United States Code, or in liquidation, reorganization, receivership, or other insolvency proceeding under State law, may avoid any transfer of an interest of the participating tobacco product manufacturer, or any obligation incurred by such manufacturer, that was made or incurred on or within 2 years before the date of the filing of a bankruptcy petition, if such manufacturer made such transfer or incurred such obligation to hinder or defeat in any fashion the payment of any obligation, interest, or debt of the manufacturer arising under the liability apportionment agreement. Any property vesting in the participating tobacco product manufacturer following such a proceeding shall be subject to all claims and interest of creditors arising under the liability apportionment agreement.

(f) LIMITATION ON STATE COURTS.—No court of any State, Tribe, or political subdivision of a State may take any action to inhibit the effective operation of subsection (c).

SEC. 1413. ATTORNEYS' FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) RIGHT TO ESTABLISH.—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 1414. EFFECT OF COURT DECISIONS.

(a) SEVERABILITY.—If any provision of titles I through XIII, or the application thereof to any person, manufacturer or circumstance, is held invalid, the remainder of the provisions of those titles, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) NONSEVERABILITY.—If a court of competent jurisdiction enters a final decision substantially limiting or impairing the essential elements of title XIV, specifically the requirements of sections 1404 and 1405, then the provisions of section 1412 are null and void and of no effect.

SEC. 1415. CRIMINAL LAWS NOT AFFECTED.

Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors or their directors, officers, employees, successors, or assigns.

SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT LAWS IN THE FUTURE.

The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress in accordance with the provisions of Article I of the Constitution of the United States and more than 200 years of history.

SEC. 1417. DEFINITIONS.

In this title:

(1) TERMS DEFINED IN TITLE VII.—Any term used in this title that is defined in title VII has the meaning given to it in title VII.

(2) ADDITIONAL DEFINITIONS.—

(A) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term ''addiction claim'' or ''dependence claim'' refers only to any cause of action to the extent that the prayer for relief seeks a cessation program, or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependence on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance. Neither addiction or dependence claims include claims related to or involving manifestation of illness or tobacco-related diseases.

(B) COMPENSATORY DAMAGES.—The term ''compensatory damages'' refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(C) PROTOCOL.—The term ''protocol'' means the agreement to be entered into by the Secretary of Health and Human Services with a participating tobacco product manufacturers under this title.

(D) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages in addition to compensatory damages having the character of punishment or penalty.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury, except where the context otherwise requires.

JEFFORDS (AND OTHERS) AMENDMENT NO. 2715

Mr. JEFFORDS (for himself, Mr. HARKIN, Mr. LEAHY, Mr. MOYNIHAN, and Mr. ALLARD) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 21, lines 2 and 3, strike ''$699,836,000, to remain available until October 1, 2000, of which'' and insert ''$758,854,000,

to remain available until October 1, 2000, of which not less than $3,860,000 shall be available for solar building technology research, not less than $72,966,000 shall be available for photovoltaic energy systems, not less than $21,617,500 shall be available for solar thermal energy systems (of which not less than $3,000,000 shall be available for the dish/engine field verification initiative), not less than $35,750,000 shall be available for power systems in biomass/biofuels energy systems, not less than $41,083,500 shall be available for transportation in biomass/biofuels energy systems (of which not less than $3,000,000 shall be available to fund the Consortium for Plant Biotechnology Research), not less than $38,265,000 shall be available for wind energy systems, not less than $4,000,000 shall be available for the renewable energy production incentive program, not less than $7,000,000 shall be available for solar program support, not less than $5,087,000 shall be available for the international solar energy program, not less than $680,000 shall be available for solar technology transfer, not less than $5,000,000 shall be available for the National Renewable Energy Laboratory, not less than $31,250,000 shall be available for geothermal technology development, not less than $5,000,000 shall be available for the Federal building/Remote power initiative, not less than $16,325,500 shall be available for program direction,''.

On page 36, between lines 13 and 14, insert the following:

SEC. 3 OFFSETTING REDUCTIONS.

Each amount made available under the headings ''NON-DEFENSE ENVIRONMENTAL MANAGEMENT'', ''URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND'', ''SCIENCE'', and ''DEPARTMENTAL ADMINISTRATION'' under the heading ''ENERGY PROGRAMS'' and ''CONSTRUCTION, REHABILITATION, OPERATION and MAINTENANCE, WESTERN AREA POWER ADMINISTRATION (INCLUDING TRANSFER OF FUNDS)'' under the heading ''POWER MARKETING ADMINISTRATIONS'' is reduced by 1.586516988447 percent.

Prior year balances may not be reduced if they are obligated under an existing written agreement or contract to laboratories, universities or industry.

Appropriate use of funds to support meetings and technical conferences are allowed consistent with DOE's mission.

Funding increases for this amendment are for cost-shared RD&D, deployment, and technology transfer via technical and trade associations and allied non-governmental organizations.

COATS (AND LEVIN) AMENDMENT NO. 2716

Mr. COATS (for himself and Mr. LEVIN) proposed an amendment to the bill, S. 2138, supra; as follows:

At the end, add the following:

TITLE II—INTERSTATE WASTE

SEC. 201. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

''(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) Except as provided in paragraph (4), immediately upon the date of enactment of this section if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal solid waste in any landfill or incinerator that is not covered by the exceptions provided in subsection (b) and that is subject to the jurisdiction of the Governor and the affected local government.

''(2) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(C) and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may limit the quantity of out-of-State municipal solid waste received for disposal at each landfill or incinerator covered by the exceptions provided in subsection (b) that is subject to the jurisdiction of the Governor, to an annual amount equal to or greater than the quantity of out-of-State municipal solid waste received for disposal at such landfill or incinerator during calendar year 1993.

''(3)(A) Except as provided in paragraph (4), any State that imported more than 750,000 tons of out-of-State municipal solid waste in 1993 may establish a limit under this paragraph on the amount of out-of-State municipal solid waste received for disposal at landfills and incinerators in the importing State as follows:

''(i) In calendar year 1999, 95 percent of the amount exported to the State in calendar year 1993.

''(ii) In calendar years 2000 through 2005, 95 percent of the amount exported to the State in the previous year.

''(iii) In calendar year 2006, and each succeeding year, the limit shall be 65 percent of the amount exported in 1993.

''(iv) No exporting State shall be required under this subparagraph to reduce its exports to any importing State below the proportionate amount established herein.

''(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste more than the following amounts of municipal solid waste:

''(I) In calendar year 1999, the greater of 1,400,000 tons or 90 percent of the amount exported to the State in calendar year 1993.

''(II) In calendar year 2000, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1999.

''(III) In calendar year 2001, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 2000.

''(IV) In calendar year 2002, the greater of 1,100,000 tons or 90 percent of the amount exported to the State in calendar year 2001.

''(V) In calendar year 2003, 1,000,000 tons.

''(VI) In calendar year 2004, 750,000 tons.

''(VII) In calendar year 2005 or any calendar year thereafter, 550,000 tons.

''(ii) The Governor of an importing State may take action to restrict levels of imports to reflect the appropriate level of out-of-State municipal solid waste imports if—

''(I) the Governor of the importing State has notified the Governor of the exporting State and the Administrator, 12 months prior to taking any such action, of the importing State's intention to impose the requirements of this section;

''(II) the Governor of the importing State has notified the Governor of the exporting State and the Administrator of the violation by the exporting State of this section at least 90 days prior to taking any such action; and

''(III) the restrictions imposed by the Governor of the importing State are uniform at all facilities and the Governor of the importing State may only apply subparagraph (A) or (B) but not both.

''(C) The authority provided by subparagraphs (A) and (B) shall apply for as long as a State exceeds the permissible levels as determined by the Administrator under paragraph (6)(C).

''(4)(A) A Governor may not exercise the authority granted under this section if such action would result in the violation of, or would otherwise be inconsistent with, the terms of a host community agreement or a permit issued from the State to receive out-of-State municipal solid waste.

''(B) Except as provided in paragraph (3), a Governor may not exercise the authority granted under this section in a manner that would require any owner or operator of a landfill or incinerator covered by the exceptions provided in subsection (b) to reduce the amount of out-of-State municipal solid waste received from any State for disposal at such landfill or incinerator to an annual quantity less than the amount received from such State for disposal at such landfill or incinerator during calendar year 1993.

''(5) Any limitation imposed by a Governor under paragraph (2) or (3)—

''(A) shall be applicable throughout the State;

''(B) shall not directly or indirectly discriminate against any particular landfill or incinerator within the State; and

''(C) shall not directly or indirectly discriminate against any shipments of out-of-State municipal solid waste on the basis of place of origin and all such limitations shall be applied to all States in violation of paragraph (3).

''(6) ANNUAL STATE REPORT.—

''(A) IN GENERAL.—Within 90 days after enactment of this section and on April 1 of each year thereafter the owner or operator of each landfill or incinerator receiving out-of-State municipal solid waste shall submit to the affected local government and to the Governor of the State in which the landfill or incinerator is located, information specifying the amount and State of origin of out-of-State municipal solid waste received for disposal during the preceding calendar year, and the amount of waste that was received pursuant to host community agreements or permits authorizing receipt of out-of-State municipal solid waste. Within 120 days after enactment of this section and on May 1 of each year thereafter each State shall publish and make available to the Administrator, the Governor of the State of origin and the public, a report containing information on the amount of out-of-State municipal solid waste received for disposal in the State during the preceding calendar year.

''(B) CONTENTS.—Each submission referred to in this section shall be such as would result in criminal penalties in case of false or misleading information. Such information shall include the amount of waste received, the State of origin, the identity of the generator, the date of the shipment, and the type of out-of-State municipal solid waste. States making submissions referred to in this section to the Administrator shall notice these submissions for public review and comment at the State level before submitting them to the Administrator.

''(C) LIST.—The Administrator shall publish a list of importing States and the out-of-State municipal solid waste received from each State at landfills or incinerators not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste. The list for any calendar year shall be published by June 1 of the following calendar year.

For purposes of developing the list required in this section, the Administrator shall be responsible for collating and publishing only that information provided to the Administrator by States pursuant to this section. The Administrator shall not be required to gather additional data over and above that provided by the States pursuant to this section, nor to verify data provided by the States pursuant to this section, nor to arbitrate or otherwise entertain or resolve disputes between States or other parties concerning interstate movements of municipal

solid waste. Any actions by the Administrator under this section shall be final and not subject to judicial review.

''(D) SAVINGS PROVISION.—Nothing in this subsection shall be construed to preempt any State requirement that requires more frequent reporting of information.

''(7) Any affected local government that intends to submit a request under paragraph (1) or take formal action to enter into a host community agreement after the date of enactment of this subsection shall, prior to taking such action—

''(A) notify the Governor, contiguous local governments, and any contiguous Indian tribes;

''(B) publish notice of the action in a newspaper of general circulation at least 30 days before taking such action;

''(C) provide an opportunity for public comment; and

''(D) following notice and comment, take formal action on any proposed request or action at a public meeting.

''(8) Any owner or operator seeking a host community agreement after the date of enactment of this subsection shall provide to the affected local government the following information, which shall be made available to the public from the affected local government:

''(A) A brief description of the planned facility, including a description of the facility size, ultimate waste capacity, and anticipated monthly and yearly waste quantities to be handled.

''(B) A map of the facility site that indicates the location of the facility in relation to the local road system and topographical and hydrological features and any buffer zones and facility units to be acquired by the owner or operator of the facility.

''(C) A description of the existing environmental conditions at the site, and any violations of applicable laws or regulations.

''(D) A description of environmental controls to be utilized at the facility.

''(E) A description of the site access controls to be employed, and roadway improvements to be made, by the owner or operator, and an estimate of the timing and extent of increased local truck traffic.

''(F) A list of all required Federal, State, and local permits.

''(G) Any information that is required by State or Federal law to be provided with respect to any violations of environmental laws (including regulations) by the owner and operator, the disposition of enforcement proceedings taken with respect to the violations, and corrective measures taken as a result of the proceedings.

''(H) Any information that is required by State or Federal law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

''(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The authority to prohibit the disposal of out-of-State municipal solid waste provided under subsection (a)(1) shall not apply to landfills and incinerators in operation on the date of enactment of this section that—

''(A) received during calendar year 1993 documented shipments of out-of-State municipal solid waste; and

''(B)(i) in the case of landfills, are in compliance with all applicable Federal and State laws and regulations relating to operation, design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action; or

''(ii) in the case of incinerators, are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429) and applicable State laws and regulations relating to facility design and operations.

''(2) A Governor may not prohibit the disposal of out-of-State municipal solid waste pursuant to subsection (a)(1) at facilities described in this subsection that are not in compliance with applicable Federal and State laws and regulations unless disposal of municipal solid waste generated within the State at such facilities is also prohibited.

''(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) In any case in which an affected local government is considering entering into, or has entered into, a host community agreement and the disposal or incineration of out-of-State municipal solid waste under such agreement would preclude the use of municipal solid waste management capacity described in paragraph (2), the Governor of the State in which the affected local government is located may prohibit the execution of such host community agreement with respect to that capacity.

''(2) The municipal solid waste management capacity referred to in paragraph (1) is that capacity—

''(A) that is permitted under Federal or State law;

''(B) that is identified under the State plan; and

''(C) for which a legally binding commitment between the owner or operator and another party has been made for its use for disposal or incineration of municipal solid waste generated within the region (identified under section 4006(a)) in which the local government is located.

''(d) COST RECOVERY SURCHARGE.—

''(1) AUTHORITY.—A State described in paragraph (2) may adopt a law and impose and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

''(2) APPLICABILITY.—The authority to impose a cost recovery surcharge under this subsection applies to any State that on or before April 3, 1994, imposed and collected a special fee on the processing or disposal of out-of-State municipal solid waste pursuant to a State law.

''(3) LIMITATION.—No such State may impose or collect a cost recovery surcharge from a facility on any out-of-State municipal solid waste that is being received at the facility under 1 or more contracts entered into after April 3, 1994, and before the date of enactment of this section.

''(4) AMOUNT OF SURCHARGE.—The amount of the cost recovery surcharge may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (6) and in no event may exceed $1.00 per ton of waste.

''(5) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State covered by this subsection shall be used to fund those solid waste management programs administered by the State or its political subdivision that incur costs for which the surcharge is collected.

''(6) CONDITIONS.—(A) Subject to subparagraphs (B) and (C), a State covered by this subsection may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

''(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

''(ii) the surcharge is based on those costs to the State demonstrated under clause (i) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

''(iii) the surcharge is compensatory and is not discriminatory.

''(B) In no event shall a cost recovery surcharge be imposed by a State to the extent that the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax paid to the State or its political subdivision or to the extent that the amount of the surcharge is offset by voluntarily agreed payments to a State or its political subdivision in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

''(C) The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A)(iii).

''(7) DEFINITIONS.—As used in this subsection:

''(A) The term 'costs' means the costs incurred by the State for the implementation of its laws governing the processing or disposal of municipal solid waste, limited to the issuance of new permits and renewal of or modification of permits, inspection and compliance monitoring, enforcement, and costs associated with technical assistance, data management, and collection of fees.

''(B) The term 'processing' means any activity to reduce the volume of solid waste or alter its chemical, biological or physical state, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

''(e) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed—

''(1) to have any effect on State law relating to contracts; or

''(2) to affect the authority of any State or local government to protect public health and the environment through laws, regulations, and permits, including the authority to limit the total amount of municipal solid waste that landfill or incinerator owners or operators within the jurisdiction of a State may accept during a prescribed period: *Provided*, That such limitations do not discriminate between in-State and out-of-State municipal solid waste, except to the extent authorized by this section.

''(f) DEFINITIONS.—As used in this section:

''(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means—

''(i) the public body created by State law with responsibility to plan for municipal solid waste management, a majority of the members of which are elected officials, for the area in which the facility is located or proposed to be located; or

''(ii) the elected officials of the city, town, township, borough, county, or parish exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or is proposed to be located.

''(B)(i) Within 90 days after the date of enactment of this section, a Governor may designate and publish notice of which entity listed in clause (i) or (ii) of subparagraph (A) shall serve as the affected local government for actions taken under this section and after publication of such notice.

''(ii) If a Governor fails to make and publish notice of such a designation, the affected local government shall be the elected officials of the city, town, township, borough, county, parish, or other public body created pursuant to State law with primary jurisdiction over the land or the use of land on which the facility is located or is proposed to be located.

''(C) For purposes of host community agreements entered into before the date of publication of the notice, the term means either a public body described in subparagraph (A)(i) or the elected officials of any of the

public bodies described in subparagraph (A)(ii).

''(2) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding document or documents executed by duly authorized officials of the affected local government that specifically authorizes a landfill or incinerator to receive municipal solid waste generated out of State, but does not include any agreement to pay host community fees for receipt of waste unless additional express authorization to receive out-of-State waste is also included.

''(3) The term 'out-of-State municipal solid waste' means, with respect to any State, municipal solid waste generated outside of the State. Unless the President determines it is inconsistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal solid waste generated outside of the United States. Notwithstanding any other provision of law, generators of municipal solid waste outside the United States shall possess no greater right of access to disposal facilities in a State than United States generators of municipal solid waste outside of that State.

''(4) The term 'municipal solid waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal solid waste' does not include—

''(A) any solid waste identified or listed as a hazardous waste under section 3001;

''(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

''(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal solid waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

''(D) any solid waste that is—

''(i) generated by an industrial facility; and

''(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator of the waste, or is located on property owned by a company in which the generator of the waste has an ownership interest;

''(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

''(F) any industrial waste that is not identical to municipal solid waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

''(G) any medical waste that is segregated from or not mixed with municipal solid waste (as otherwise defined in this paragraph); or

''(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

''(5) The term 'compliance' means a pattern or practice of adhering to and satisfying standards and requirements promulgated by the Federal or a State government for the purpose of preventing significant harm to human health and the environment. Actions undertaken in accordance with compliance schedules for remediation established by Federal or State enforcement authorities shall be considered compliance for purposes of this section.

''(6) The terms 'specifically authorized' and 'specifically authorizes' refer to an explicit authorization, contained in a host community agreement or permit, to import waste from outside the State. Such authorization may include a reference to a fixed radius surrounding the landfill or incinerator that includes an area outside the State or a reference to any place of origin, reference to specific places outside the State, or use of such phrases as 'regardless of origin' or 'outside the State'. The language for such authorization may vary as long as it clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from sources outside the State.

''(g) IMPLEMENTATION AND ENFORCEMENT.—Any State may adopt such laws and regulations, not inconsistent with this section, as are necessary to implement and enforce this section, including provisions for penalties.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

''Sec. 4011. Interstate transportation of municipal solid waste.''.

SEC. 202. NEEDS DETERMINATION.

The Governor of a State may accept, deny or modify an application for a municipal solid waste management facility permit if—

(1) it is done in a manner that is not inconsistent with the provisions of this section;

(2) a State law enacted in 1990 and a regulation adopted by the Governor in 1991 specifically requires the permit applicant to demonstrate that there is a local or regional need within the State for the facility; and

(3) the permit applicant fails to demonstrate that there is a local or regional need within the State for the facility.

DASCHLE AMENDMENT NO. 2717

Mr. DOMENICI (for Mr. DASCHLE) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 9, line 3, after ''expended,'' insert ''of which $460,000 may be made available for the Omaha District to pay pending takings claims for flooding of property adjacent to the Missouri River caused by actions taken by the Army Corps of Engineers, of which $2,540,000 shall be available for the project on the Missouri River between Fort Peck Dam and Gavins Point in South Dakota and Montana, under section 9(f) of the Act entitled ''An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes'', approved December 22, 1944 (102 Stat. 4031)''.

LAUTENBERG (AND TORRICELLI) AMENDMENT NO. 2718

Mr. DOMENICI (for Mr. LAUTENBERG, for himself and Mr. TORRICELLI) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 8, line 9, add the following before the period:

'': *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers is directed to use $500,000 of funds appropriated herein to continue construction of the Joseph G. Minish Passaic River waterfront park and historic area, New Jersey project''.

LEVIN (AND GLENN) AMENDMENT NO. 2719

Mr. DOMENICI (for Mr. LEVIN, for himself and Mr. GLENN) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 8, line 9, before the period at the end insert '': *Provided further*, That of amounts made available by this Act for project modifications for improvement of the environment under section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a), $500,000 may be made available for demonstration of sediment remediation technology under section 401 of the Water Resources Development Act of 1990 (33 U.S.C. 1268 note; 104 Stat. 4644)''.

BIDEN AMENDMENT NO. 2720

Mr. DOMENICI (for Mr. BIDEN) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 27, line 21, delete ''.'' and insert in lieu thereof the following:

'': *Provided further*, That of the amount appropriated herein $30,000,000 is to be available for the Initiatives for Proliferation Prevention program: *Provided further*, That of the amount appropriated herein $30,000,000 shall be available for the purpose of implementing the 'nuclear cites' initiative pursuant to the discussions of March 1998 between the Vice President of the United States and the Prime Minister of the Russian Federation and between the U.S. Secretary of Energy and the Minister of Atomic Energy of the Russian Federation.''

LEVIN AMENDMENT NO. 2721

Mr. DOMENICI (for Mr. LEVIN) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 8, line 9, insert the following before the period:

'': *Provided further*, That the Secretary of the Army may make available $100,000 for the Belle Isle Shoreline Erosion Protection, Michigan project; $100,000 for the Riverfront Towers to Renaissance Center Shoreline Protection, Michigan project; and $200,000 for the Great Lakes Basin, Sea Lamprey Control, Section 206, Michigan, project''.

REID AMENDMENT NO. 2722

Mr. DOMENICI (for Mr. REID) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 22, line 19, insert the following before the period:

'': *Provided further*, That $500,000 of the unobligated balanced may be applied to the identification of trace element isotopes in environmental samples at the University of Nevada-Las Vegas''.

CLELAND AMENDMENT NO. 2723

Mr. DOMENICI (for Mr. CLELAND) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 3, line 8, insert the following before the period:

'': *Provided further*, That the Secretary of the Army may make available $500,000 for the Atlanta Watershed, Atlanta, Georgia project''.

LEVIN (AND GLENN) AMENDMENT NO. 2724

Mr. DOMENICI (for Mr. LEVIN, for himself and Mr. GLENN) proposed an

amendment to the bill, S. 2138, supra; as follows:

On page 10, line 7, before the period insert '', of which $250,000 may be made available to support the National Contaminated Sediment Task Force established by section 502 of the Water Resources Development Act of 1992 (33 U.S.C. 1271 note; Public Law 102–580)''.

DASCHLE AMENDMENT NO. 2725

Mr. DOMENICI (for Mr. REID) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 22, line 14, strike: ''$2,669,560,000'' and replace it with ''$2,676,560,000''.

DORGAN (AND CONRAD) AMENDMENT NO. 2726

Mr. DOMENICI (for Mr. DORGAN, for himself and Mr. CONRAD) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 18, line 2 insert the following after the period:

'': *Provided further,* That the Secretary of the Interior shall waive the scheduled annual payments for fiscal years 1998 and 1999 under section 208 of Public Law 100–202 (101 Stat. 1329–118)''.

And on page 16, line 16 strike: ''$697,919,000'' and insert: ''$697,669,000''.

MURRAY (AND GORTON) AMENDMENT NO. 2727

Mr. DOMENICI (for Mrs. MURRAY, for herself and Mr. GORTON) proposed an amendment to the bill, S. 2138, supra; as follows:

On page 21, line 19: strike ''$456,700,000, to remain available until expended.'' and insert ''424,600,000, to remain available until expended.''

ENERGY SUPPLY

On page 21, line 2 strike ''motor vehicles for replacement only, $699,836,000, to re-'' and insert ''motor vehicles for replacement only, 699,864,000, to re-''

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

BURNS (AND OTHERS) AMENDMENT NO. 2728

(Ordered to lie on the table.)

Mr. BURNS (for himself, Mrs. MURRAY, Mr. STEVENS, Mr. BYRD, and Mr. INOUYE) submitted an amendment intended to be proposed by them to the bill (S. 2057) to authorize appropriations for the fiscal year 1999 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; as follows:

On page 324, below line 14, add the following:

SEC. 2705. AUTHORIZATION OF ADDITIONAL MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING PROJECTS.

(a) ADDITIONAL ARMY CONSTRUCTION PROJECTS INSIDE THE UNITED STATES.—In addition to the projects authorized by section 2101(a), and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), as increased by subsection (d), the Secretary of the Army may also acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Kansas	Fort Riley	$16,500,000
Kentucky	Fort Campbell	$15,500,000
Maryland	Fort Detrick	$7,100,000
New York	Fort Drum	$7,000,000
Texas	Fort Sam Houston	$5,500,000
Virginia	Fort Eustis	$4,650,000
	Fort Meyer	$6,200,000

(b) ADDITIONAL ARMY CONSTRUCTION PROJECT OUTSIDE THE UNITED STATES.—In addition to the projects authorized by section 2101(b), and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), as increased by subsection (d), the Secretary of the Army may also acquire real property and carry out the military construction project for the location outside the United States, and in the amount, set forth in the following table:

Army: Outside the United States

Country	Installation or location	Amount
Korea	Camp Casey	$8,000,000

(c) IMPROVEMENT OF ARMY FAMILY HOUSING AT WHITE SANDS MISSILE RANGE, NEW MEXICO.—In addition to the projects authorized by section 2103, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), as increased by subsection (d), the Secretary of the Army may also improve existing military family housing units (36 units) at White Sands Missile Range, New Mexico, in an amount not to exceed $3,650,000.

(d) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS, ARMY MILITARY CONSTRUCTION.—(1) The total amount authorized to be appropriated by section 2104(a) is hereby increased by $74,100,000.

(2) The amount authorized to be appropriated by section 2104(a)(1) is hereby increased by $62,450,000.

(3) The amount authorized to be appropriated by section 2104(a)(2) is hereby increased by $8,000,000.

(4) The amount authorized to be appropriated by section 2104(a)(5)(A) is hereby increased by $3,650,000.

(e) ADDITIONAL NAVY CONSTRUCTION PROJECTS INSIDE THE UNITED STATES.—In addition to the projects authorized by section 2201(a), and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), as increased by subsection (g), the Secretary of the Navy may also acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or location	Amount
Florida	Naval Station, Mayport	$3,400,000
Maine	Naval Air Station, Brunswick	$15,220,000
Pennsylvania	Naval Inventory Control Point, Mechanisburg.	$1,600,000
	Naval Inventory Control Point, Philadelphia.	$1,550,000
South Carolina	Marine Corps Recruit Depot, Parris Island.	$8,030,000

(f) IMPROVEMENT OF NAVY FAMILY HOUSING AT WHIDBEY ISLAND NAVAL AIR STATION, WASHINGTON.—In addition to the projects authorized by section 2203, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(5)(A), as increased by subsection (g), the Secretary of the Navy may also improve existing military family housing units (80 units) at Whidbey Island Naval Air Station, Washington, in an amount not to exceed $5,800,000.

(g) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS, NAVY MILITARY CONSTRUCTION.—(1) The total amount authorized to be appropriated by section 2204(a) is hereby increased by $35,600,000.

(2) The amount authorized to be appropriated by section 2204(a)(1) is hereby increased by $29,800,000.

(3) The amount authorized to be appropriated by section 2204(a)(5)(A) is hereby increased by $5,800,000.

(h) ADDITIONAL AIR FORCE CONSTRUCTION PROJECTS INSIDE THE UNITED STATES.—In addition to the projects authorized by section 2301(a), and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(1), as increased by subsection (k), the Secretary of the Air Force may also acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or location	Amount
Colorado	Falcon Air Force Station	$5,800,000
Georgia	Robins Air Force Base	$6,000,000
Louisiana	Barksdale Air Force Base	$9,300,000
North Dakota	Grand Forks Air Force Base	$8,800,000
Ohio	Wright-Patterson Air Force Base	$4,600,000
Texas	Goodfellow Air Force Base	$7,300,000
Wyoming	F.E. Warren Air Force Base	$3,850,000

(i) CONSTRUCTION AND ACQUISITION OF AIR FORCE FAMILY HOUSING.—In addition to the projects authorized by section 2302(a), and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(5)(A), as increased by subsection (k), the Secretary of the Air Force may also construct or acquire family housing units (including land acquisition) at the installation, for the purpose, and in the amount set forth in the following table:

Air Force: Family Housing

State	Installation or location	Purpose	Amount
Montana	Malmstrom Air Force Base	62 Units	$12,300,000

(j) IMPROVEMENT OF AIR FORCE FAMILY HOUSING.—In addition to the projects authorized by section 2303, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(5)(A), as increased by subsection (k), the Secretary of the Air Force may also improve existing military family housing units as follows:

(1) Travis Air Force Base, California, 105 units, in an amount not to exceed $10,500,000.

(2) Moody Air Force Base, Georgia, 68 units, in an amount not to exceed $5,220,000.

(3) McGuire Air Force Base, New Jersey, 50 units, in an amount not to exceed $5,800,000.

(4) Seymour Johnson Air Force Base, North Carolina, 95 units, in an amount not to exceed $10,830,000.

(k) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS, AIR FORCE MILITARY CONSTRUCTION.—(1) The total amount authorized to be appropriated by section 2304(a) is hereby increased by $90,300,000.

(2) The amount authorized to be appropriated by section 2304(a)(1) is hereby increased by $45,650,000.

(3) The amount authorized to be appropriated by section 2304(a)(5)(A) is hereby increased by $44,650,000.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

DASCHLE AMENDMENT NO. 2729

Mr. DASCHLE proposed an amendment to the bill (S. 2159) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for fiscal year ending September 30, 1999, and for other purposes; as follows:

[See text of amendment No. 2714 on pages S6581–S6627 of today's RECORD.]

NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a full committee hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, June 25, 1998 at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the nomination of William L. Massey to be a member of the Federal Energy Regulatory Committee.

For further information, please contact Gary Ellsworth of the Committee staff at (202) 224–7141.

SUBCOMMITTEE ON INVESTIGATIONS

Ms. COLLINS. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing entitled ''The Safety of Food Imports: From the Farm to the Table—A Case Study of Tainted Imported Fruit.'' This hearing is the second in a series of hearings the Subcommittee has scheduled as part of an in-depth investigation into the safety of food imports. The hearing will be a case study of an outbreak of Cyclospora associated with fresh raspberries imported into the United States from Central America. The outbreak of Cyclospora occurred in over 20 states across the country in 1996 and in 1997.

This hearing will take place on Thursday, July 9, 1998, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building. For further information, please contact Timothy J. Shea of the Subcommittee staff at 224–3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. JEFFORDS. 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 Wednesday, June 17, and Thursday, June 18, 1998, to conduct a hearing on H.R. 10, the Financial Services Act of 1998.

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

COMMITTEE ON FINANCE

Mr. JEFFORDS. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Thursday, June 18, 1998 beginning at 10:00 a.m., in room 215 Dirksen.

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

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Thursday, June 18, 1998, at 10:00 a.m., in room 226, of the Senate Dirksen Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, June 18, 1998 at 2:00 p.m., in room 226 of the Senate Dirksen Office Building to hold a hearing on ''Judicial Nominations.''

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources and the House Commerce, Subcommittee on Health and Environment be authorized to meet for a hearing on ''Putting Patients First: resolving the Allocation of Transplant Organs'' during the session of the Senate on Thursday, June 18, at 2:30 p.m.

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

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 18, 1998, at 10:00 am to hold a hearing.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Thursday, June 18, 1998 at 2:00 p.m. for a hearing on ''The Adequacy of Commerce Department Satellite Export Controls.''

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

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Subcommittee on National parks, Historic Preservation and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 18, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:00 p.m. The purpose of this hearing is to receive testimony on S. 469, a bill to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild and Scenic Rivers Act; S. 1016, a bill to authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes; S. 1665, a bill to reauthorize the Delaware and Lehigh Navigation Canal National Heritage Corridor Act, and for other purposes; S. 2039, a bill to amend the National Trails System Act to designate El Camino Real Tierra Adentro as a National Historic Trail; and H.R. 2186, a bill to authorize the Secretary of the Interior to provide assistance to the National Trails Interpretive Center in Casper, Wyoming.

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

CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Caucus on International Narcotics Control be authorized to meet during the session of the Senate on Thursday, June 18 at 2:00 p.m. to receive testimony on the U.S. Efforts in International Demand Reduction Programs.

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

ADDITIONAL STATEMENTS

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

• Mr. SMITH of New Hampshire. Mr. President, later this year, under the so-called Brady Law, the National Instant Criminal Background Check System (NICS) will go into effect. The purpose of NICS is to prevent the purchase of guns by persons who are prohibited from owning firearms.

Pursuant to the Privacy Act of 1974, on June 4, 1998, the United States Department of Justice published in the Federal Register a notice of its intention to establish a new system of records with respect to NICS to be maintained by the Federal Bureau of Investigation.

I am particularly concerned about the statement in the Justice Department's June 4 notice that states that ''[i]n cases where the NICS background check does not locate a disqualifying record, information about the individual will only be retained temporarily for audit purposes and will be destroyed after eighteen months.''

It seems to me, Mr. President, that there is no reason whatever why the

FBI would need to retain private information on a law-abiding citizen for any time at all, let alone for eighteen months, after that person has been determined not to be someone who is prohibited by law from owning a firearm. Any legitimate ''audit purposes'' could certainly be addressed without retaining such private information on file at the FBI.

Mr. President, later this year the Senate will be considering the Fiscal Year 1998 appropriations bill for the Commerce, Justice, and State Departments, the Judiciary, and related agencies. It is my intention to introduce an amendment to that bill as soon as it is reported to the Senate by the Committee on Appropriations. The text of my amendment will be as follows:

''None of the funds appropriated pursuant to this Act or any other provision of law may be used for (1) any system to implement 18 U.S.C. 922(t) that does not require and result in the immediate destruction of all information, in any form whatsoever, submitted by or on behalf of any person who has been determined not to be prohibited from owning a firearm; (2) the implementation of any tax or fee in connection with the implementation of 18 U.S.C. 922(t); provided, that any person aggrieved by a violation of this provision may bring an action in the federal district court for the district in which the person resides; provided, further, that any person who is successful with respect to any such action shall receive damages, punitive damages, and such other remedies as the court may determine to be appropriate, including a reasonable attorney's fee.''

I am taking the unusual step of notifying the Senate of my intention to offer this amendment in the hope that the Committee on Appropriations will consider including my proposed language in the Commerce, Justice, State, and the Judiciary appropriations bill when it is reported to the Senate.●

HONORING CROSS STREET A.M.E. ZION CHURCH ON ITS 175TH ANNIVERSARY

● Mr. DODD. Mr. President, I rise today to pay tribute to Cross Street African Methodist Episcopal Zion Church on the occasion of its 175th anniversary. This church, located in Middletown, Connecticut, has been a beacon of spiritual guidance in the community for many generations. In fact, Cross Street is the second oldest A.M.E. Zion Church in Connecticut and the seventh oldest in the world.

The church's tradition of moral leadership and service to its community dates back to its earliest years. The Reverend Jehiel Beamon, the son of a former slave from Colchester, Connecticut, was the first pastor at the church. Not only was he a leader within the church, but he was also an active abolitionist who helped found the Middletown Anti-Slavery Society. He was also president of the Connecticut State Convention of Colored Men, which worked to secure voting rights for African-Americans. Due to his involvement and activities in the community, this church was called ''The Freedom Church'' by many people.

Since that time, the church has been rebuilt and it has also moved. But while it has undergone physical changes, there has never been any wavering in the importance that this church holds for its congregation and surrounding community.

In the church's written history, it is said that ''the sole purpose for the church's formation was to secure a place for people of color to worship freely.'' But Cross Street A.M.E. Zion Church has become far more than simply a place of worship.

The members of Cross Street A.M.E. Zion have carried their message of hope beyond the church's walls and into the neighboring community. They are helping people in and around Middletown to deal with the difficult social problems of the modern day. They have initiated various projects to deal with issues ranging from homelessness to HIV. The people of Cross Street A.M.E. Zion Church are acting on their faith and they are reaching out to those in need to make their community a better place to live.

This past April, I had the opportunity to attend Cross Street A.M.E. Zion Church for its Palm Sunday services. I was struck by the deep sense of faith and hope among the congregation, and I was pleased to share in their worship on that day. I offer my heartfelt congratulations to the Cross Street A.M.E. Zion Church on its 175th anniversary. Theirs has been a very rich history, and I hope that the church will continue to play a positive role in the lives of its congregation and surrounding community for many years to come.●

RELEASE OF A NEW GAO REPORT PRIVATE HEALTH INSURANCE: DECLINING EMPLOYER COVERAGE MAY AFFECT ACCESS FOR 55- TO 64-YEAR-OLDS

● Mr. JEFFORDS. Mr. President, as the Chairman of the Committee on Labor and Human Resources, I have closely monitored Americans' access to health insurance coverage in order to have a better understanding of the trends and underlying causes of declining coverage. Today, I am releasing a new U.S. General Accounting Office (GAO) report, entitled Private Health Insurance: Declining Employer Coverage May Affect Access for 55- to 64-Year-Olds (GAO/HEHS–98–133). This report examines access of the ''near elderly'' population to employer-based and individually purchased private insurance. Specifically, the report discusses the employment, income, health, and health insurance status of the near elderly, their ability to obtain employer-based health insurance if they retire before becoming eligible for Medicare, and their health insurance coverage through the individual market or employer-based continuation insurance. The findings of this report will be the focus of a Labor Committee hearing scheduled for June 25, 1998.

This report and the related hearing have been prompted by a growing concern that several factors may converge to create the situation where a large number of 55- to 64-year-old Americans could lose, or have to pay considerably more for, health insurance coverage. Access to affordable health insurance is especially critical for this population, since their health status is worse than that of any other age group except the elderly who have the guarantee of Medicare.

The near elderly population can be characterized as a group in transition. Their employment status, income, and health are all changing. The GAO reports that currently about 14 percent of the near elderly have no health insurance. Although this rate is lower than that of the nonelderly population in general, the GAO found several disturbing trends that could lead to a substantial increase in the numbers of near elderly without health insurance coverage. This would be especially problematic, since the near elderly have 25 percent lower median family incomes, but 45 percent higher health care expenses than younger age groups. The economic impact would be even greater when ''baby boomers'' join the near elderly, swelling their ranks from 21 million now, to 35 million by 2010.

Most of the near elderly acquire health insurance coverage from one of the same three sources as individuals in other age groups: their employers, the individual private insurance market, or the Government. The main difference between coverage for the near elderly and the elderly is that all elderly qualify for Medicare, but only those near elderly who are ill or disabled qualify for public benefits. The main difference between coverage for the near elderly and younger populations is that a larger proportion of the near elderly are covered by public programs or have individual coverage through the private market. The near elderly are more likely to be willing to purchase individual coverage than younger age groups, because they are more averse to the risk of high health care costs.

The two main factors contributing to the trend for more near elderly to become uninsured are the loss of employer-based coverage and the rising costs of individual insurance. The GAO reports that in 1996, 65 percent of the near elderly had employer-based insurance; but, despite the strong economy, this coverage is being eroded, particularly as the near elderly retire. Already the rate of health coverage offered by large employers to retirees has fallen faster than that of coverage for active employees, from an estimated 60 to 70 percent in the 1980s to less than 40 percent now. In addition, retirees are

being asked to cover a larger share of the premiums. For example, in 1995, retirees contributed an average of $655 more for family coverage than did active workers. The higher costs have prompted some near elderly to drop coverage. The GAO reports that 27 percent of the 5.3 million retirees who discontinued employer-based benefits in 1994 cited expense as a factor.

Retirees also are finding that more employers are linking retirement health benefits to length of service. The GAO report cites the example of one company's requiring 35 years of service to qualify for the maximum employer contribution of 75 percent. This trend does not bode well for retirees who have changed jobs frequently.

The source of health insurance for the near elderly generally correlates with employment, health, and income status. The GAO reported that near elderly who had individual health insurance were more likely to be employed, be in good health, and have higher incomes than those on Medicare and Medicaid. The correlation is not absolute, however, because 20 percent of the uninsured had family incomes of more than $50,000 per year, and one-third of near elderly with individual insurance had incomes of less than $20,000. It should be noted that the latter figure may be misleading because this group may have less-expensive coverage, less-comprehensive benefits, or the income measured may not have included all of their resources.

In general, the near elderly are more likely than younger age groups to purchase insurance through the individual market if they lose employer-based coverage. Often, however, they find that they do not qualify because of preexisting conditions, or that the cost of individual coverage is prohibitive because premiums take into account the fact that this age group uses more medical services than younger age groups. The GAO found that premiums for individual coverage constituted 10 percent of the median family income for the married near elderly in Colorado, which is almost twice as much as the retiree share of employer-subsidized family coverage.

Some States have provisions guaranteeing access to some form of individual coverage, but in most States individual insurance for the near elderly is limited by exclusion of certain conditions or body parts, or denial of coverage. Chronic conditions that are common in this age group such as diabetes and heart disease, and even such non-life-threatening conditions as chronic back pain, may limit eligibility for coverage. Reform measures that have been considered or implemented to remedy these problems include initiatives to limit variation in premium rates; guarantees of certain products to all applicants; and State pools for those who have been rejected by at least one carrier. These measures have met with variable success. Overall, the GAO found that about 15 percent of all applicants were denied individual coverage, while many others were denied coverage for specific conditions.

Since 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) has provided temporary access to health insurance for individuals of all ages who leave the work force. COBRA may be particularly important to the near elderly before they become eligible for Medicare. It is attractive for continuation coverage, because its premiums reflect lower group coverage rates, and it does not exclude preexisting conditions. However, several factors limit the near elderly's ability to use COBRA benefits: It is available only to retirees whose employers have at least 20 employees and who offer health insurance benefits; it lasts for only 18 months; and it may not be affordable since employers do not provide contributions. It also is important to note that many people who could benefit from this program do not know about it.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) also guarantees that some people who leave group coverage have access to individual coverage and cannot be excluded for preexisting conditions. However, HIPAA has stringent eligibility requirements, depends on exhausting COBRA or other continuation benefits, and places no limits on the cost of premiums.

Before HIPAA was enacted, individuals usually relinquished COBRA before they had used up all of their benefits. The impact of HIPAA on the use of COBRA remains to be determined, but cost may prevent many near elderly from being able to afford to take advantage of either. The GAO reports that whereas one company paid almost the entire cost of health benefits for active employees, the COBRA cost ranged from about $5,600 to almost $8,000 per year for family coverage. This is a great deal of money, particularly for people who are taking advantage of the program because they are leaving the work force.

I believe the GAO report, Private Health Insurance: Declining Employer Coverage May Affect Access for 55- to 64-Year-Olds (GAO/HEHS–98–133), will be an important resource as Congress considers proposals to expand health insurance coverage.

Mr. President, I ask that excerpts of the executive summary of the report be printed in the RECORD.

The material follows:

PRIVATE HEALTH INSURANCE DECLINING EMPLOYER COVERAGE MAY AFFECT ACCESS FOR 55- TO 64-YEAR-OLDS

EXECUTIVE SUMMARY

PURPOSE

A series of age-related transitions heighten the importance of health insurance to 55- to 64-year-old (near elderly) Americans and could place them at greater risk of losing, or paying considerably more for, coverage. Too young to qualify for Medicare, many near elderly are considering retirement or gradually moving out of the workforce. These events may be related to worsening health, job displacement, or simply the desire for more leisure time. Since health insurance for most Americans is an employment-related benefit, retirement may necessitate looking for another source of affordable coverage. However, insurance purchased directly in the individual market or temporary continuation coverage purchased through an employer are typically expensive alternatives and may not always be available. Their affordability, moreover, may be exacerbated both by declining health and the reduction in income associated with retirement. For some near elderly, an alternative to retiring without insurance is simply to continue working.

The Chairman, Senate Committee on Labor and Human Resources, requested GAO to assess the ability of Americans aged 55 to 64 to obtain health benefits through the private market—either employer-based or individually purchased. In particular, he requested an examination of the available evidence on the near elderly's health, employment, income, and health insurance status; ability to obtain employer-based health insurance if they retire before becoming eligible for Medicare; and use of and costs associated with purchasing coverage through the individual market or employer-based continuation insurance.

To provide the Congress with information about the near elderly and their ability to obtain health insurance, GAO analyzed the March 1997 Current Population Survey (CPS), a source widely used by researchers; reviewed the literature on employer-based health benefits for early retirees; interviewed employers, benefit consultants, insurers, and other experts knowledgeable about retiree health issues and the individual insurance market; and updated information provided in previous GAO reports.

Background

Like most Americans, over 80 percent of the near elderly have access to some type of health insurance—either comprehensive or partial. Nevertheless, continued access to health insurance is a primary concern for some 55- to 64-year-olds who retire early or who lose access to employer-based coverage. First, Medicare is not generally available until one reaches age 65. Second, most Americans under age 65 rely on coverage provided by an employer—a link that may be severed by retirement, a voluntary reduction in hours, or job displacement. The existing alternatives to employer-based coverage for the near elderly are (1) individually purchased insurance, (2) temporary continuation coverage from a former employer, (3) public programs such as Medicare and Medicaid, and (4) becoming uninsured. Among those aged 55 to 64, Medicare or Medicaid are available only to the very poor or the disabled.

Some near elderly may encounter difficulty in obtaining comprehensive, affordable coverage through the individual market or in obtaining any health coverage at all. The high cost of individual insurance often mirrors the near elderly's greater use of medical services compared with younger age groups. Moreover, some individuals may be denied individual insurance because of preexisting health conditions. Retirees whose jobs provided health benefits that ended at retirement, however, may continue temporary coverage for up to 18 months under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Only firms with 20 or more employees who offer health insurance to active workers are required to provide COBRA continuation coverage. When available, COBRA coverage may entail substantial out-of-pocket costs, because the employer is not required to pay any portion of the premium. For eligible individuals leaving group coverage who exhaust any available COBRA or other conversion coverage,

the Health Insurance Portability and Accountability Act of 1996 (HIPAA) guarantees access to the individual market, regardless of health status and without coverage exclusions. The premiums faced by some individuals eligible for a HIPAA guaranteed access product, however, may be substantially higher than the prices charged to those in the individual market who are healthy.

Persons seeking an alternative to employer-based coverage may go through a common mental calculus in which health status and cost play a prominent role. For someone healthy, there are no access barriers to the individual market and the cost may be lower than COBRA, especially if he or she buys a policy with a higher deductible. For someone with a health condition who wants comprehensive coverage, the individual market may not be an option because of health screening by insurers—a process that can result in the denial of coverage or the exclusion of preexisiting conditions. However, COBRA, if available, has no such screening and should be more affordable than individually purchased insurance because of economies of scale and reduced administrative costs that result in lower premiums for group coverage. HIPAA's group-to-individual portability now provides a link between COBRA and the individual market for those who are eligible, but it is too early to judge the extent to which unhealthy consumers will utilize this option.

Results in Brief

Though the near elderly access health insurance differently than other segments of the under-65 population, their overall insurance picture is no worse and is better than that of some younger age groups. These differences, however, may not portend well for the future. Since fewer employers are offering health coverage as a benefit to future retirees, the proportion of near elderly with access to affordable health insurance could decline. The resulting increase in uninsured near elderly would be exacerbated by demographic trends, since 55- to 64-year-olds represent one of the fastest growing segments of the U.S. population.

The current insurance status of the near elderly is largely due to (1) the fact that many current retirees still have access to employer-based health benefits, (2) the willingness of near-elderly Americans to devote a significant portion of their income to health insurance purchased through the individual market, and (3) the availability of public programs to disabled 55- to 64-year-olds. Today, the individual market and Medicare and Medicaid for the disabled often mitigate declining access to employer-based coverage for near-elderly Americans and may prevent a larger portion of this age group from becoming uninsured. The steady decline in the proportion of large employers who offer health benefits to early retirees, however, clouds the outlook for future retirees. In the absence of countervailing trends, it is even less likely that future 55- to 64-year-olds will be offered health insurance as a retirement benefit, and those who are will bear an increased share of the cost. Although trends in employers' required retiree cost sharing are more difficult to decipher than the decisions of firms not to offer retiree health benefits, the effects may be just as troublesome for future retirees. Thus, some additional employers have tied cost sharing to years of service; consequently, retirees who changed jobs frequently may be responsible for most of the premium.

Moreover, access and affordability problems may prevent future early retirees who lose employer-based health benefits from obtaining comprehensive private insurance. The two principal private insurance alternatives are the individual market and COBRA continuation coverage. With respect to individual insurance, the cost may put it out of reach of some 55- to 64-year-olds—an age group whose health and income is in decline. For example, the premiums for popular health insurance products available in the individual markets of Colorado and Vermont are at least 10 percent and 8.4 percent, respectively, of the 1996 median family income for the married near elderly. In contrast, the average retiree contribution for employer subsidized family coverage is about one-half of these percentages. The near elderly who are in poorer health run the risk of paying even higher premiums, having less comprehensive coverage offered, or being denied coverage altogether. Thirteen states require insurers to sell some individual market products to all who apply, and about 20 states limit the variation among premiums that insurers may offer to individuals. GAO found that conditions such as chronic back pain and glaucoma are commonly excluded from coverage or result in higher premiums. Furthermore, significant variation exists among the states that limit premiums: A few require insurers to community-rate the coverage they sell—that is, all those covered pay the same premium—while other states allow insurers to vary premiums up to 300 percent or more.

COBRA is only available to retirees whose employers offer health benefits to active workers, and coverage is only temporary, ranging from 18 to 36 months. Information on the use of COBRA by Americans is spotty. Although 55- to 64-year-olds who become eligible for COBRA are more likely than younger age groups to enroll, the use of continuation coverage by early retirees appears to be relatively low. Since new federal protections under HIPAA—ensuring access to individual insurance for qualifying individuals who leave group coverage—hinge on exhausting COBRA, the incentives for enrolling and the length of time enrolled could change. Because employers generally do not contribute toward the premium, the cost of COBRA may be a factor in the low enrollment, even though similar coverage in the individual market may be more expensive. In 1997, the average insurance premium for employer-based coverage was about $3,800. However, there is significant variation in premiums due to firm size, benefit structure, locale, demographics, or aggressiveness in negotiating rates. For one company, total health plan premiums in 1996 for early retirees ranged from about $5,600 to almost $8,000 for family coverage. Since this firm paid the total cost of practically all of the health plans it offered to current workers, the COBRA cost would have come as a rude awakening to retirees . . .●

PROGRESS IN NIGERIA?

● Mr. FEINGOLD. Mr. President, I rise for the second time in less than two weeks to comment on the extraordinary events taking place in Nigeria.

Earlier this week, Nigeria's new leader, Gen. Abdulsalam Abubakar, released nine of the country's best known political prisoners. I welcome this step, with the hope that the release of these individuals demonstrates a commitment to enact true democratic reform in this troubled West African country.

These individuals include some of Nigeria's top political, labor and human rights leaders. For the record, I will list their names here.

General Olusegun Obassanjo (rt.), a former head of state and the only military leader to turn over power to a democratically elected civilian government and who has played a prominent role on the international stage as an advocate of peace and reconciliation. He had been sentenced following a secret trial that failed to meet international standard of due process over an alleged coup plot that has never been proven to exist.

Frank Kokori, Secretary General of the National Union of Petroleum and Natural Gas Workers (NUPENG). He was arrested in August 1994, although charges have never been filed.

Chris Anyanwu, Editor-in-Chief and publisher of The Sunday Magazine.

Human rights activist Dr. Beko Ransome-Kuti.

Milton Dabibi, Secretary General of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN), who was arrested in January 1996 for leading demonstrations against the canceled 1993 elections and against government efforts to control the labor unions.

Politician Olabiyi Durojaye.

Former Sultan of Sokoto, Ibrahim Dasuki.

Former state governor Bola Ige.

Uwen Udoh, democracy campaigner.

Mr. President, these individuals have all played an important role in Nigeria, and were all arrested under circumstances that confirm our worst fears of the overarching power of the military in Nigeria. Their release is significant.

That said, I do not want to become overly enthusiastic about the situation in Nigeria. For despite this great gesture, hundreds of other political prisoners remain in detention—often without charge. Prominent among these remaining prisoners, is, of course Chief Moshood Abiola, presumed winner of the 1993 presidential election, who was thrown in jail on charges of treason. Whatever his role might be in any upcoming transition process, his release and some meaningful acknowledgment of his annulled mandate is key to that process.

On top of that, numerous repressive decrees remain in force, including the infamous State Security [Detention of Persons] Decree #2, which gives the military sweeping powers of arrest and detention. The existence of such decrees would allow the military to re-arrest any of the prisoners released this week at any time.

Mr. President, I recently introduced S. 2102, The Nigerian Democracy and Civil Society Empowerment Act of 1998, which calls on the United States to encourage the political, economic and legal reforms necessary to ensure the rule of law and respect for human rights in Nigeria and to aggressively support a timely and effective transition to democratic, civilian government for the people of Nigeria.

Among other policy initiatives, this bill establishes a set of benchmarks regarding the transition to democracy. These benchmarks include a call for

the release of ''individuals who have been imprisoned without due process or for political reasons.''

The release this week of nine prisoners is a start. Let's hope Nigeria's new leader continues to implement policies that move the country in the right direction.

Nigeria's people deserve no less.

Mr. President, I ask to have printed in the RECORD a New York Times piece from June 17, 1998, that presents an excellent overview of the reaction inside Nigeria over Abubakar's actions.

The article follows:

[From the New York Times, June 17, 1998]

FOR NIGERIA'S LEADER, OFFENSE IS THE BEST DEFENSE

(By Howard W. French)

From the moment Gen. Abdulsalam Abubakar was selected last week to succeed the late ruler, Gen. Sani Abacha, Nigerians began speculating whether a reformist era might be at hand after years of ruinous dictatorship. After all, General Abubakar was long reputed to be a prim professional among Nigeria's politicized and immensely rich generals.

With his order on Monday to release a core group of the country's best-known political prisoners, including an internationally respected former head of state, General Abubakar sent the first clear signal of his intention to bring about an overhaul in the way his country is run, and more than that, conveyed a sense of urgency in the matter.

Though the general's position is precarious, Western diplomats and Nigerian analysts say he has decided to move decisively and not wait to consolidate his power. To delay, the say, would risk falling victim to powerful enemies at opposite extremes of his country's no-holds-barred politics.

''General Abubakar had no choice but to move forward if he wanted to salvage his country and protect himself,'' said one Western diplomat. ''To have postponed making difficult decisions about democracy and prisoners, or to defer the issue of a transition to civilian rule, would have been to play the game of his enemies. The army would have devoured him itself, and failing that there would have been a major risk of a civilian uprising.''

On one side, General Abubakar faces his own army, an institution whose top officers have grown fat on years of power, and many of whose younger leaders have climbed the rungs of power awaiting their turn at the trough.

As army chief of staff, General Abubakar had no direct command over the mechanized units that typically determine who holds or takes power in the country. Moreover, the new head of state had none of the huge personal wealth of his predecessors, having avoided the kinds of army jobs that allow top brass to dole out lucrative contracts to other officers, siphoning off kickbacks and purchasing staff loyalty.

On the other side, Nigeria's large and well-developed opposition was emboldened by the death of General Abachar, who had a reputation as the most iron-fisted leader his country of 105 million people had ever known.

And because General Abacha and his military predecessors had so regularly flouted their pledges to restore democracy or arrange a transition to civilian rule, General Abubakar could promise little that would make a dent in the distrust of a hardened political class.

For many veterans of Nigeria's democracy movement, the only acceptable tactic is to take on the army head on, and with the army divided, they feel the future is now.

People both inside the army and out say that General Abubakar's best hope—and decisive test—of engineering a transition to civilian rule is to work with the man believed to have won the country's only democratic election, in 1993, Moshood K. O. Abiola. The last military Government annulled the vote and threw Mr. Abiola in jail, where he remains.

In this scenario, General Abubakar would involve Mr. Abiola in negotiations aimed at easing the military out of power, in much the same way Nelson Mandela helped work out a soft landing for South Africa's apartheid rulers before his release from prison in 1990.

It is too early to say whether this hope will come about in Nigeria, and many hurdles remain.

General Abubakar's first gesture upon taking power, in an unusual post-midnight swearing in ceremony less than 24 hours after General Abacha's death, was to commit himself to his predecessor's previously declared but widely discounted deadline for an Oct. 1 handover to an elected civilian government.

Experts on the Nigerian military say that this pledge was intended more as a bid to outflank the army, whose powerful factions are known to oppose any democratic change, than as an effort to placate a deeply skeptical civilian opposition.

The new leader's second hurdle, these experts say, was to prevent a showdown with pro-democracy groups sworn to carry out a series of protests linked to the fifth anniversary last Friday of the elections apparently won by Mr. Abiola, a millionaire businessman from the south.

The opposition ignored calls to cancel Friday's demonstrations, but security forces were relatively restrained in putting the protests down, marking a sharp turn from the wanton brutality of the Abacha years.

With the threat of strife defused, General Abubakar then freed the former head of state—a retired general, Olusegun Obasanjo—and seven other prominent prisoners, buying international praise and a more forgiving attitude from the opposition.

''A clash between an overzealous army and the June 12 protesters would have badly undercut Abubakar,'' said Walter Carrington, a former American ambassador to Nigeria. ''The restraint that the army showed and the subsequent release of the prisoners suggests strongly that the new leadership has gained control over hard-liners in the army. What we will likely see now is a progressive release of more and more political prisoners.''

By far the country's most important political prisoner is Mr. Abiola, the jailed presidential candidate. And ultimately, both the opposition and much of the outside world's judgment of General Abubakar will depend on his handling of Mr. Abiola, whose claim to the presidency is considered by most to be legitimate.

Whatever the opposition demands now, almost no one in Nigeria expects the military to simply surrender power. For one thing, Nigeria's military high command is dominated by northerners, including the new head of state himself, who after years of control are wary of an outright takeover by southerners.

Still, for many in the south, and beyond, no credible election in Nigeria can be organized until the nation comes to terms with the cancellation of Mr. Abiola's mandate.

Regional and ethnic antagonisms like these could scuttle any negotiated arrangements with Mr. Abiola. But many Nigerians suspect that discussions may already be under way to secure his release in a negotiated framework, providing him some recognition and perhaps a large role in transitional arrangements while keeping the field open for other candidates in a fresh election.

''There is no point in pretending that Abiola didn't win an election any longer,'' said one senior Nigerian military adviser who spoke on condition of anonymity. ''What will have to be worked out is an arrangement with Abiola that allows the country to move forward.''●

TRIBUTE IN HONOR OF ROGER WOOD, WOKQ NEWSCASTER

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Roger Wood, an institution in the broadcast community of New Hampshire. After 18 years as a radio reporter in New Hampshire, and 30 years in broadcasting, Roger will sign off at the end of this month to pursue other endeavors.

Roger, 50, is the news and public affairs director at WOKQ radio in Dover, New Hampshire. WOKQ is one of the largest stations in New Hampshire and, with its country music format, is my unequaled favorite. I am a WOKQ listener not only for the playlist, but because of the outstanding commitment, dignity and character that Roger Wood has brought to the airwaves in my years as an avid listener.

Roger's distinguished voice has broadcast the news to WOKQ's audience since 1979. Before that, Roger was a one-man news shop at WHEB AM/FM in nearby Portsmouth, and worked at a variety of Seacoast stations including WWNH in Rochester, WBBX in Portsmouth and New Hampshire Public Television. He also worked at a number of stations in his native Pennsylvania before he graced the Granite State with his presence in 1970.

Roger was never one to ''rip and read.'' He always researched stories thoroughly, went the extra mile to get an interview, and provided in-depth coverage from both a human interest and hard news perspective. And he has the awards lining his walls that prove it.

Roger Wood is committed to his profession. He has won recognition from UPI, AP, the New Hampshire Association of Broadcasters, and other organizations in the categories of outstanding reporting, best newscasts and individual achievement. He has said that one of the achievements that most touched him was his coverage in 1986 on the fatal launch of the Space Shuttle Challenger, with New Hampshire teacher Christa McAuliffe on board. Roger was at Cape Canaveral in person, and has said the implications of the explosion left him ''deeply moved.''

Although Roger Wood is a veteran newscaster, he is a trend setter for the new generation of broadcasters. He led WOKQ to an innovative partnership with Channel 7 in Boston, establishing the largest news exchange network in the region. He has also implemented the first cellular car phone reporting system in the region, for listeners to report accidents and news ''they see happening.''

Roger is committed to his community, as exemplified by involvement in the Seacoast Housing Partnership, a nonprofit organization dedicated to affordable housing issues; the Mayor's Blue Ribbon Committee to improve the environment of Pierce Island; the Greater Seacoast Economic Summit; and his volunteer work to help many local citizens in poverty.

Most importantly, Roger is committed to his family. He and his wife, Elaine, have been married for 27 years. They have three grown children, Roger, Jr., Emily, and Melissa. His family can be very proud of his achievements, and glad that they will finally have him around for breakfast!

My interviews with Roger always left us sharing a laugh and, though he rarely took any of my suggestions for use in the ''Joke Du Jour,'' his resulting stories were always fair, thorough, and forthright as is always Roger's style. As he embraces future endeavors in the field of communications and public relations, I wish Roger Wood all the best. I am proud to represent him in the United States Senate, and proud to call him my friend.●

EDWARD LELECHEUR

● Mr. KERRY. Mr. President, today I want to call the Senate's attention to Representative Edward LeLecheur and his long history of service to the Commonwealth of Massachusetts. The citizens of Massachusetts have benefitted from his many years of service and legislative leadership. Representative LeLecheur has distinguished himself as a community leader, an elected official and a family man.

Edward LeLecheur started out as the proprietor of Stolphine's Market in Lowell, MA. This small grocery store is located in the part of Lowell know as the Sacred Heart, named for the nearby Catholic church. Ed expanded his role in the community by running for and winning elected office in 1975. Since then, he has served the eighteenth Middlesex District for twenty-three years in the same way he served Stolphine's customers: one at a time, with integrity, dedication, and compassion.

Representative LeLecheur's giving spirit has manifested itself in a variety of ways. He drives physically challenged people to the Registry of Motor Vehicles, and purchases turkeys at Thanksgiving and Christmas time which he then delivers door-to-door. Those same people, and countless others, enjoy the baseball stadium which Representative LeLecheur helped bring to Lowell. Due to Ed LeLecheur, our national pastime is now part of the ongoing revitalization of Merrimac Valley, bringing prosperity and entertainment to families from all the surrounding communities.

As a member of the Ways and Means Committee for the past twelve years and as the current chair of the Committee on Personnel and Administration, Representative LeLecheur has also extended his spirit and service beyond his district. The state has been well served as a result of his leadership.

Representative LeLecheur has been successful not only as a state representative, but also as a family man. He and his wife Eileen were married on June 4, 1947, more than fifty years ago. Together they raised six children and are today the proud grandparents of ten grandsons and granddaughters.

Mr. President, I would like to thank him for his tireless devotion to his constituents and neighbors. Representative LeLecheur is an inspiration to all of us who work for positive change in our communities. I wish him and Eileen the very best as they embark on this new chapter in life.●

U.N. WORLD DAY TO COMBAT DESERTIFICATION AND DROUGHT

● Mr. FEINGOLD. Mr. President, I rise today to mark the United Nations World Day to Combat Desertification and Drought, which took place on June 17, 1998. This date is important because it is the fourth anniversary of the United Nations General Assembly's adoption of the Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. The United States has signed this treaty, but the Senate has yet to exercise its advice and consent responsibilities on this important convention.

The World Day to Combat Desertification and Drought should serve as a reminder to this body that we should honor our constitutional responsibilities and act on this convention in a timely manner. As the ranking member of the Subcommittee on African Affairs, I have had the opportunity to see first-hand how valuable the provisions of this convention will be to the people of Africa. It is a mechanism by which the people of Africa will be assisted in preserving and protecting their land, which is a vital link in Africa's fight to become self-sufficient.

This convention is particularly important for Africa because more than two-thirds of the land comprising that continent is desert or dry land, and almost three-quarters of the dry land used for farming is in danger of becoming unusable. The Sahelian droughts of 1971–73 and 1984–85 contributed to the deaths of thousands and spurred migration that put further stress on already taxed land around Africa.

This Convention to Combat Desertification, which has already been ratified by 120 countries, establishes a framework to promote land and soil health in developing countries, in order to halt the kind of neglect that eventually leads to land that is unusable for farming. This convention is innovative because it requires participation from all segments of the population, from the farmers and herders who work the land, to local governments and environmental organizations, to those who affect environmental and agricultural policy at the national and regional levels.

I hope that the Senate will act on this convention in a timely manner, and that next year's anniversary of the Convention to Combat Desertification will be marked by progress in the world's efforts to protect the land and soil that sustains life in developing countries.●

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Mr. COCHRAN. Mr. President, I call for the regular order.

The PRESIDING OFFICER. The clerk will report S. 2057.

The assistant legislative clerk read as follows:

A bill (S. 2057) to authorize appropriations for the fiscal year 1999 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 Senate proceeded to consider the bill.

Pending:

Feinstein amendment No. 2405, to express the sense of the Senate regarding the Indian nuclear tests.

Brownback amendment No. 2407 (to amendment No. 2405), to repeal a restriction on the provision of certain assistance and other transfers to Pakistan.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the following Senators as members of the Senate Delegation to the Mexico-U.S. Interparliamentary Group Meeting during the Second Session of the 105th Congress, to be held in Morelia, Mexico, June 19–21, 1998: the Senator from Kansas (Mr. ROBERTS) and the Senator from Alabama (Mr. SESSIONS).

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. COCHRAN. Mr. President, in executive session, I ask unanimous consent the Indian Affairs Committee be discharged from further consideration of the nomination of Michael Trujillo to be Director of the Indian Health Service Department of Health and Human Services.

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

Mr. COCHRAN. I further ask unanimous consent that the Senate immediately proceed to its consideration and further ask consent that the Senate also proceed en bloc to the consideration of Calendar No. 625. I finally ask consent that the nominations be confirmed, the motions to reconsider

be laid upon the table, any statements relating to the nominations appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate then turn to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Michael H. Trujillo, of New Mexico, to be Director of the Indian Health Service.

DEPARTMENT OF COMMERCE

Q. Todd Dickinson, of Pennsylvania, to be Deputy Commissioner Patents and Trademarks.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

COASTAL BARRIER RESOURCES SYSTEM

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 412, S. 1104.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1104) to direct the Secretary of the Interior to make corrections in maps relating to the Coastal Barrier Resources System.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

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

Mr. COCHRAN. Mr. President, I ask unanimous consent the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (S. 1104) was considered read the third time, and passed as follows:

S. 1104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CORRECTION TO MAP.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall make such corrections to the set of maps described in subsection (b) as are necessary to restore on that map the September 30, 1982, boundary for Unit M09 on the portion of Edisto Island located immediately to the south and west of the Jeremy Cay Causeway.

(b) MAP DESCRIBED.—The map described is the map included in a set of maps entitled ''Coastal Barrier Resources System,'' dated October 24, 1990, that relates to the Unit of the Coastal Barrier Resources Systems entitled ''Edisto Complex M09/M09P''.

ORDER FOR STAR PRINT—S. 2157

Mr. COCHRAN. Mr. President, I ask unanimous consent that there be a star print of S. 2157, with the changes at the desk.

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

LIFE INSURANCE BENEFITS PRECEDENCE ORDER ACT OF 1997

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 265, H.R. 1316.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1316) to amend chapter 87 of title 5, United States Code, with respect to the order of precedence to be applied in the payment of life insurance benefits.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

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

Mr. COCHRAN. Mr. President, I ask unanimous consent that the bill be considered read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 1316) was considered read the third time, and passed.

INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES DEMONSTRATION ACT AMENDMENTS OF 1998

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 402, S. 1279.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1279) to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to provide for the transfer of services and personnel from the Bureau of Indian Affairs to the Office of Self-Governance, to emphasize the need for job creation on Indian reservations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Employment, Training and Related Services Demonstration Act Amendments of 1998''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Indian tribes and Alaska Native organizations that have participated in carrying out programs under the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.) have—

(A) improved the effectiveness of services provided by those tribes and organizations;

(B) enabled more Indian people to secure employment;

(C) assisted welfare recipients; and

(D) otherwise demonstrated the value of integrating education, employment, and training services;

(2) the initiative under the Indian Employment, Training and Related Services Demonstration Act of 1992 should be strengthened by ensuring that all programs that emphasize the value of work may be included within a demonstration program of an Indian tribe or Alaska Native organization;

(3) the initiative under the Indian Employment, Training and Related Services Demonstration Act of 1992 shares goals and innovative approaches of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

(4) the programs referred to in paragraph (2) should be implemented by the Office of Self-Governance of the Department of the Interior, the unit within the Department of the Interior responsible for carrying out self-governance programs under the Indian Self-Determination and Education Assistance Act; and

(5) the initiative under the Indian Employment, Training and Related Services Demonstration Act of 1992 should have the benefit of the support and attention of the officials of—

(A) the Department of the Interior; and

(B) other Federal agencies involved with policymaking authority with respect to programs that emphasize the value of work for American Indians and Alaska Natives.

SEC. 3. AMENDMENTS TO THE INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES DEMONSTRATION ACT OF 1992.

(a) DEFINITIONS.—Section 3 of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3402) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively; and

(2) by inserting before paragraph (2) the following:

''(1) FEDERAL AGENCY.—The term 'Federal agency' has the same meaning given the term 'agency' in section 551(1) of title 5, United States Code.''.

(b) PROGRAMS AFFECTED.—Section 5 of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3404) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The programs'';

(2) in subsection (a), as designated by paragraph (1) of this subsection, by striking ''employment opportunities, or skill development'' and all that follows through the end of the subsection, and inserting ''securing employment, retaining employment, or creating employment opportunities and other programs relating to the world of work.''; and

(3) by adding at the end the following:

''(b) PROGRAMS.—The programs referred to in subsection (a) may include, at the option of an Indian tribe—

''(1) the program commonly referred to as the general assistance program established under the Act of November 2, 1921 (commonly known as the 'Snyder Act') (42 Stat. 208, chapter 115; 25 U.S.C. 13); and

''(2) the program known as the Johnson-O'Malley Program established under the Johnson-O'Malley Act (25 U.S.C. 452 through 457), if the applicable plan for the Indian tribe under section 4 includes educational services for elementary and secondary school students that familiarize those students with the world of work.''.

(c) PLAN REVIEW.—Section 7 of the Indian Employment, Training and Related Services

Demonstration Act of 1992 (25 U.S.C. 3406) is amended—

(1) by striking ''Federal department'' and inserting ''Federal agency'';

(2) by striking ''Federal departmental'' and inserting ''Federal agency'';

(3) by striking ''department'' each place it appears and inserting ''agency''; and

(4) in the third sentence, by inserting ''statutory requirement,'' after ''to waive any''.

(d) PLAN APPROVAL.—Section 8 of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3407) is amended—

(1) in the first sentence, by inserting before the period at the end the following: ''(including any request for a waiver that is made as part of the plan submitted by the tribal government)''; and

(2) in the second sentence, by inserting before the period at the end the following: '', including reconsidering the disapproval of any waiver requested by the Indian tribe''.

(e) JOB CREATION ACTIVITIES.—Section 9 of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3408) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The plan submitted''; and

(2) by adding at the end the following:

''(b) EMPLOYMENT OPPORTUNITIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, including any requirement of a program that is integrated under a plan under this Act, a tribal government may use a percentage of the funds made available under this Act (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 10.

''(2) DETERMINATION OF PERCENTAGE.—The percentage of funds that a tribal government may use under this subsection is the greater of—

''(A) the rate of unemployment in the area subject to the jurisdiction of the tribal government; or

''(B) 10 percent.

''(c) LIMITATION.—The funds used for an expenditure described in subsection (a) may only include funds made available to the Indian tribe by a Federal agency under a statutory or administrative formula.''.

(f) FEDERAL RESPONSIBILITIES.—Section 11(a) of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3410(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''Bureau of Indian Affairs'' and inserting ''Office of Self-Governance'';

(2) in paragraph (3), by striking ''and'' at the end;

(3) in paragraph (4)—

(A) by inserting ''delivered under an arrangement subject to the approval of the Indian tribe participating in the project,'' after ''appropriate to the project,''; and

(B) by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(5) the convening by an appropriate official of the lead agency (whose appointment is subject to the confirmation of the Senate) and a representative of the Indian tribes that carry out demonstration projects under this Act, in consultation with each such Indian tribe, of a meeting not less than 2 times during each fiscal year for the purpose of providing an opportunity for all Indian tribes that carry out demonstration projects under this Act to discuss issues relating to the implementation of this Act with officials of each department specified in subsection (a).''.

(g) ADDITIONAL RESPONSIBILITIES.—In assuming the responsibilities for carrying out the duties of a lead agency under section 11(a) of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3410(a)) pursuant to the amendments made to that section by subsection (f) of this section, the Director of the Office of Self-Governance of the Department of the Interior shall ensure that an orderly transfer of those lead agency functions to the Office occurs in such manner as to eliminate any potential adverse effects on any Indian tribe that participates in a demonstration project under the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.).

(h) PERSONNEL.—In carrying out the amendment made by subsection (f)(1), the Secretary of the Interior shall transfer from the Bureau of Indian Affairs to the Office of Self-Governance of the Department of the Interior such personnel and resources as the Secretary determines to be appropriate.

SEC. 4. CONSOLIDATED ADVISORY COMMITTEES.

The Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.) is amended by adding at the end the following:

''SEC. 19. CONSOLIDATED ADVISORY COMMITTEE.

''(a) IN GENERAL.—The head of each Federal agency specified in section 4 that otherwise has jurisdiction over a program that is integrated under this Act (in accordance with a plan under section 6) shall permit a tribal government that carries out that plan to establish a consolidated advisory committee to carry out the duties of each advisory committee that would otherwise be required under applicable law (including any council or commission relating to private industry) to carry out the programs integrated under the plan.

''(b) WAIVERS.—As necessary to carry out subsection (a), each agency head referred to in that paragraph shall waive any statutory requirement, regulation, or policy requiring the establishment of an advisory committee (including any advisory commission or council).''.

SEC. 5. ALASKA REGIONAL CONSORTIA.

The Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.), as amended by section 4 of this Act, is amended by adding at the end the following:

''SEC. 20. ALASKA REGIONAL CONSORTIA.

''(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), the Secretary shall permit a regional consortium of Alaska Native villages or regional or village corporations (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) to carry out a project under a plan that meets the requirements of this Act through a resolution adopted by the governing body of that consortium or corporation.

''(b) WITHDRAWAL.—Nothing in subsection (a) is intended to prohibit an Alaska Native village or regional or village corporation from withdrawing from participation in any portion of a program conducted pursuant to that subsection.''.

SEC. 6. EFFECTIVE DATES.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act, except that the transfer of functions to the Office of Self-Governance of the Department of the Interior under the amendment made by section 3(f)(1) shall be carried out not later than 90 days after the date of enactment of this Act.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be considered read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

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

The committee amendment was agreed to.

The bill (S. 1279), as amended, was considered read the third time, and passed.

ORDERS FOR FRIDAY, JUNE 19, 1998

Mr. COCHRAN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on Friday, June 19. I further ask that on Friday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then resume consideration of S. 2057, the Department of Defense authorization bill.

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

PROGRAM

Mr. COCHRAN. Mr. President, for the information of all Senators, the Senate will reconvene tomorrow at 10 o'clock a.m. and immediately resume consideration of the Department of Defense authorization bill. It is hoped that Members who wish to offer amendments to the defense bill will come to the floor during Friday's session to offer and debate their amendments under short time agreements.

The majority leader has announced that there will be no votes during tomorrow's session. Therefore, any votes ordered with respect to the Department of Defense bill, or any other legislative or executive items, will be postponed to occur at a later date. The leader would also remind Members that the Independence Day recess is fast approaching. Therefore, the cooperation of all Members will be necessary to make progress on a number of important items, including appropriations bills, any available conference reports, the Higher Education Act, the Department of Defense authorization bill, and any other legislative or executive items that may be cleared for action.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. COCHRAN. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:43 p.m., adjourned until Friday, June 19, 1998, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 18, 1998:

DEPARTMENT OF STATE

JOHN BRUCE CRAIG, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SULTANATE OF OMAN.

ROBERT C. FELDER, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BENIN.

JAMES VELA LEDESMA, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF

COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE GABONESE REPUBLIC AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE.

ELIZABETH DAVENPORT MC KUNE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE STATE OF QATAR.

GEORGE MU, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COTE D'IVOIRE.

ROBERT CEPHAS PERRY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CENTRAL AFRICAN REPUBLIC.

DAVID MICHAEL SATTERFIELD, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LEBANON.

JOSEPH GERARD SULLIVAN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ANGOLA.

DIANE EDITH WATSON, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERATED STATES OF MICRONESIA.

MELISSA FOELSCH WELLS, OF CONNECTICUT, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ESTONIA.

KENT M. WIEDEMANN, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF CAMBODIA.

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS ONE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

HOMI JAMSHED, OF CALIFORNIA
SUSAN MERRILL, OF VIRGINIA

DEPARTMENT OF STATE

NANCY MORGAN SERPA, OF NEW JERSEY

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS TWO, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

ELIZABETH A. HOGAN, OF CALIFORNIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF AGRICULTURE

JOHN W. WADE, OF MISSOURI

UNITED STATES INFORMATION AGENCY

SCOTT MARSHALL RAULAND, OF FLORIDA
SUSAN L. ZIADEH, OF WASHINGTON

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

ERIC M. ALEXANDER, OF NEW MEXICO
KEITH MIMS ANDERTON, OF FLORIDA
MICHAEL A. BARKIN, OF FLORIDA
JAMES A. CAROUSO, OF ARIZONA
JONATHAN JAMES CARPENTER, OF CALIFORNIA
BENJAMIN E. CHANG, OF VIRGINIA
MICHAEL S. DIXON, OF IOWA
MARK R. EVANS, OF VIRGINIA
MITCHELL L. FERGUSON, OF CALIFORNIA
TROY DAMIAN FITRELL, OF WASHINGTON
SHAWN ERIC FLATT, OF MISSOURI
MARTINA FLINTROP, OF VIRGINIA
MARC FORINO, OF VIRGINIA
STEVEN B. FOX, OF NEW YORK
NATHAN V. HOLT, JR., OF FLORIDA
MELISSA ANNE HUDSON, OF TEXAS
CHERYL NORMAN JOHNSON, OF TEXAS
PHILIP WINSTON KAPLAN, OF NEW YORK
RAYMOND J. KENGOTT, OF FLORIDA
DALE G. KREISHER, OF OHIO
STEPHAN A. LANG, OF MISSOURI
MIREMBE NANTONGO, OF VIRGINIA
JAMES ALLEN PLOTTS, OF CALIFORNIA
WILLIAM SCOFIELD ROWLAND, OF WASHINGTON
DAVID V. SCOTT, OF WYOMING
BRIAN WESLEY SHUKAN, OF VIRGINIA
COURTNEY L. TURNER, OF VIRGINIA
ANDREW CHESTER WILSON, OF WASHINGTON
JOY ONA YAMAMOTO, OF CALIFORNIA

UNITED STATES INFORMATION AGENCY

JOE BERNARD LOVEJOY, OF TEXAS
MICHAEL PETER MACY, OF FLORIDA
KATHLEEN E. REILLY, OF CALIFORNIA
MARY DRAKE SCHCOLL, OF TEXAS
JOHN C. VANCE, OF WYOMING

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

EDWARD L. ALLEN, OF MAINE
JENNIFER ANNE ALSTON, OF VIRGINIA
GARY DEAN ANDERSON, OF TEXAS
ALEJANDRO BAEZ, OF TEXAS
ANDREA S. BAKER, OF MARYLAND
ROBERT ALLAN BARE, OF CALIFORNIA
LOUISE BRANDT BIGOTT, OF ILLINOIS
BRETT BLACKSHAW, OF NEW YORK
TOBIN JOHN BRADLEY, OF CALIFORNIA
CHRISTIE BROUILLETTE, OF CALIFORNIA
CRAIG P. BRYANT, OF OKLAHOMA
STEVEN R. BUTLER, OF KENTUCKY
JOHN R. BUZBEE, OF THE DISTRICT OF COLUMBIA
CHARLES L. CAMPBELL, OF THE DISTRICT OF COLUMBIA
ARNOLD CRESPO, OF TEXAS
JULIEN DE DMAN, JR., OF THE DISTRICT OF COLUMBIA
ERIC L. DERRICKSON, OF MARYLAND
KIRK ALLEN DEXTER, OF VIRGINIA
ERIK KNIGHT DOMAN, OF PENNSYLVANIA
LEAH MICHELLE FENWICK, OF CALIFORNIA
TIMOTHY THOMAS FITZGIBBONS, OF NEBRASKA
RAFAEL P. FOLEY, OF NEW YORK
ROBERT M. FREEDMAN, OF WASHINGTON
PAUL N. FUJIMURA, OF CALIFORNIA
CORY VINCENT GNAZZO, OF MASSACHUSETTS
JOSEPH ALEXANDER HAMILTON, OF NEW JERSEY
BRIAN FREDERICK HARRIS, OF WASHINGTON
MELANIE S. HARRIS, OF FLORIDA
DEBORAH SUE HART, OF NORTH CAROLINA
THOMAS P. HARWOOD, OF VIRGINIA
PETER G. HEMSCH, OF CALIFORNIA
JULIANA F. HILT, OF THE DISTRICT OF COLUMBIA
JEFFREY DAVID PRESTON HORWITZ, OF NEW YORK
MICHAEL SEAN HOWERY, OF VIRGINIA
KIRK M. HUBBARD, OF VIRGINIA
ROBERT JOHN JACHIM, JR., OF WASHINGTON
VIVIAN N. KELLER, OF THE DISTRICT OF COLUMBIA
MATTHEW A. KRICHMAN, OF VIRGINIA
NICHOLAS R. KUCHOVA, OF NEW JERSEY
JERRY C. LEE, OF VIRGINIA
JOANN MARIE LOCKARD, OF VIRGINIA
LAWRENCE J. MACKO, OF VIRGINIA
HILLARY MANN, OF THE DISTRICT OF COLUMBIA
NICHOLLE M. MANZ, OF WISCONSIN
DAVID L. MC CORMICK, OF MASSACHUSETTS
DANIEL FRANCIS MC NICHOLAS, OF ILLINOIS
BETNIE M. MEDERO-NAVEDO, OF VIRGINIA
KATHERINE MARIE METRES, OF ILLINOIS
RACHEL L. MEYERS, OF CALIFORNIA
MARC NORDBERG, OF TEXAS
ENRIQUE G. ORTIZ, OF THE DISTRICT OF COLUMBIA
CARLTON PHILADELPHIA, OF FLORIDA
KATHRYN M. PYLES, OF VIRGINIA
ROGER CLAUDE RIGAUD, OF NEW JERSEY
KEVIN S. ROLAND, OF MARYLAND
STEVEN B. ROYSTER, OF VIRGINIA
MICHAEL DEAN SESSUMS, OF FLORIDA
SEIJI T. SHIRATORI, OF OREGON
DONALD ANGUS SHROPSHIRE, OF VIRGINIA
PHILLIP T. SLATTERY, OF CALIFORNIA
JAMES BROWARD STORY, OF SOUTH CAROLINA
TIMOTHY C. SWANSON, OF ARIZONA
DANIEL J. THOMPSON, OF VIRGINIA
VERNELLE TRIM, OF VIRGINIA
DAVID NORMAN TYSON, OF VIRGINIA
DUNCAN HIGHITT WALKER, OF CALIFORNIA
LISA LOUISE WASHBURN, OF TEXAS
J. RICHARD WATERS, OF ALABAMA
RANDALL A. WEYANDT, OF VIRGINIA
CARL-HEINZ JASON WEMHOENER-CUITE, OF VIRGINIA
MARGARET BRYAN WHITE, OF GEORGIA
WILLIAM D. WHITT, OF NEW YORK
BENJAMIN V. WOHLAUER, OF VIRGINIA
WILLIAM YOUNGER WOOD, JR., OF CALIFORNIA
JEFFERY A. YOUNG, OF FLORIDA
JOSEPH E. ZADROZNY, JR., OF TEXAS

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. EDMUND C. ZYSK, 0000.

To be brigadier general

COL. WILLIAM J. DAVIES, 0000.
COL. JAMES P. COMBS, 0000.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH)MICHAEL L. COWAN, 0000.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate June 18, 1998:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MICHAEL H. TRUJILLO, OF NEW MEXICO, TO BE DIRECTOR OF THE INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

DEPARTMENT OF COMMERCE

Q. TODD DICKINSON, OF PENNSYLVANIA, TO BE DEPUTY COMMISSIONER OF PATENTS AND TRADEMARKS.