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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, July 19, 2004, at 12:30 p.m.

Senate

FRIDAY, JULY 16, 2004

The Senate met at 10:01 a.m. and was called to order by the Honorable ELIZABETH DOLE, a Senator from the State of North Carolina.

PRAYER

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

Let us pray:

O God who brings unity from division and order from chaos, the Earth belongs to You and the universe is Your throne.

With one voice we offer You praise and thanksgiving. Empower people everywhere to seek and find You.

Sustain the Members of our Nation's legislative branch with Your presence and wisdom. Guide them on the safe road that they may be instruments of Your glory. Help them to restrain the wrong and encourage the good in a world challenged by evil.

Bless our military and all who fight for freedom. Comfort those who mourn.

We give thanks to You today, our Maker, Nourisher, Guardian, Governor, Healer, Benefactor, and Protector.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable ELIZABETH DOLE led the Pledge of Allegiance as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 16, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ELIZABETH DOLE, a Senator from the State of North Carolina, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, today, we will be in a period of morning business. Last night, we were able to complete our work on the Australia Free Trade Agreement. We also finished the process for sending the JOBS bill, FSC/ETI bill, to conference; therefore, we will have no rollcall votes today.

I do not anticipate a long session today, but several colleagues have asked that we be in morning business so that they have an opportunity to discuss certain issues.

We have one piece of business on the Executive Calendar. We have tried to reach a time agreement on the judicial nomination of William Myers to be a U.S. circuit judge for the Ninth Circuit. It appears unlikely that the other side will agree to a time limitation, and, therefore, I intend to file cloture on that nomination today. That vote will occur sometime early Tuesday afternoon at a time to be determined, which we will set certainly before the close of today's business.

AIDS IN AFRICA

Mr. FRIST. Mr. President, I want to briefly comment on a headline from an article from the U.K. Daily Independent. It could have been really from any periodical, but the headline says, ''AIDS reduces African life expectancy to 33.'' That is 33 years of age. In my office this morning, I came across this, and it hits me that this little virus we have lived with since the early 1980s, when it was first described and detected in this country—in this country nobody had died of this little virus, but then 5 people died, 100 died, and now thousands of people in this country have died; and then it killed about 500,000 people, and then a million, and then 5 million, and then 23 million people have died. It is destroying the continent of Africa, where the life expectancy is 33 years of age.

I ask unanimous consent to have the article printed in the RECORD.

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

Printed on recycled paper.

[From the UK Independent, July 16, 2004]

AIDS REDUCES AFRICAN LIFE EXPECTANCY TO 33

(By Elizabeth Davies)

The AIDS pandemic is ravaging countries in sub-Saharan Africa, drastically reducing life expectancy in some parts to less than 33 years, a new UN report said yesterday.

The devastating impact of the crisis can be seen most clearly in seven African countries, including Malawi and Mozambique, where babies born in 2002 are not expected to live past 40 years because of the prevalence of HIV. Children in Zambia, where 17 per cent of the population are infected with the virus, are predicted to live just 32 years. The seven countries have, between them, seen an average drop in life expectancy of 13.5 years since 1990, the UN human development report said.

''In all these countries, AIDS is reversing the hard-won development gains of recent decades,'' said Elizabeth Lwanga, the deputy director of the United Nations Development Programme (UNDP) for Africa. ''We need an unprecedented response to this crisis, which is taking a devastating toll on our communities.''

With almost a quarter of its population infected with the virus, Zimbabwe has been the country most dramatically affected. Life expectancy there has plummeted from 57 years in 1990 to 34 in 2002.

In Swaziland, where one in three people between the ages of 15 and 49 are AIDS sufferers, life expectancy has dropped by almost 20 years, and in Botswana, where the disease affects 37 per cent of the population, people can expect to live 16 years less now than in 1970.

Sub-Saharan Africa is home to just over 10 per cent of the world's population—and to almost two-thirds of all people living with HIV. In 2003, an estimated three million people in the area became infected for the first time, while 2.2 million died. As a result, many of the countries are considerably poorer than they were a decade ago; 13 of them are virtually the first countries in the UNDP report's history to have suffered a reversal in living standards.

The UNDP administrator, Mark Malloch Brown, said that the virus caused such destruction because it affected all aspects of life. Those who fell victim to the disease left behind them countries struggling to cope with the loss of such a large proportion of the workforce.

''The AIDS crisis cripples states at all levels, because the disease attacks people in their most productive years,'' said Mr. Malloch Brown. ''It tears apart the foundation of everything, from public administration and health care to the family structures.''

Mohga Kamal-Smith a health policy adviser for Oxfam, pointed to the failure of the international community as one of the main reasons for the devastation. ''As the epidemic spread, the donor contributions from richer countries went down,'' she said. ''Hardly any of the governments have achieved the 0.7 per cent GDP contribution that they committed to.''

The UNDP's annual report shows the drop in contributions from the highest-ranked countries in the list, particularly from Norway and the United States.

The lead author of the report, Sakiko Fukada-Parr, acknowledged that the most afflicted countries face enormous problems but said she believed that solutions may be found.

''AIDS is currently presenting a very basic problem in human development,'' she said. ''But other countries, like Senegal and Brazil, have achieved partial success in fighting the disease, due to easily accessible medicine and all elements of the countries getting involved.''

Mr. FRIST. Madam President, in part, the second paragraph in the article says:

The devastating impact of the crisis can be seen most clearly in seven African countries, including Malawi and Mozambique, where babies born in 2002 are not expected to live past 40 years because of the prevalence of HIV.

Without going into details of the causes, that dramatic impact demands, for a moral reason, a strong international response. I am proud that the United States is leading that moral response. This crisis is one of the great moral, humanitarian public health crises of our times. We need to address that.

Mr. REID. Madam President, will the Senator yield?

Mr. FRIST. Yes.

Mr. REID. Senator DASCHLE and I traveled to Africa a couple years ago this August. I was stunned then to go to Botswana where the average life expectancy is 39 years. Since then, it has dropped even lower. As we speak, people are dying. They are losing about 7,500 a day on the continent of Africa. So I am very glad that the majority leader, who is a physician, is following this. This is something that I don't know what we can do about. We are trying, and we have joined with the administration to try to do something about it.

Later in the day, would the leader be in a position to tell us more regarding what we are going to do next week?

Mr. FRIST. Madam President, yes, I certainly will. There are a number of issues, and we will talk about it later this morning. We will be in next week, including Monday. I would like to have the Myers vote early Tuesday afternoon. We have the Defense Appropriations bill which will be coming back from the House. As soon as it comes back, that very important bill we have acted on in the Senate will be addressed certainly next week. In addition, the Democratic leadership and the Republican leadership have begun discussions. There is likely to be another conference report coming back from the House with regard to a tax package. Nobody in the conference has to determine what the package actually is, but it will focus on issues like the 10-percent tax bracket, extension of the child tax credit, marriage penalty relief, those sorts of issues that I suspect will be addressed on the floor of the Senate next week. We can discuss other business. Next week will be a busy one. It will be our last week before going on a very long recess.

Finally, on Botswana, the Senator from Nevada mentioned two things. First of all, Senator DASCHLE and your delegation went about a year and a half ago. We followed that the next year with another bipartisan delegation to very similar countries. It takes that sort of direct participation on our part to go and see the travesty, the devastation, and to see that a large portion of these societies has been wiped out by this little virus which we can cure eventually. I am confident. It takes that participation on our part. I encourage our colleagues, even though people say Senators need to stay right here in the United States, to do traveling, interaction, dialog, observation. Since those two journeys, we have been able to come back and we can, with pride, say we are the world leader in addressing this moral public health challenge. That comes from action here, translated into action on the floor, which is what we have done.

In Botswana, if we compare 1970 to today—and this article points it out—someone born in 1970 would have lived 16 more years if this virus had not been around. So it has cut 16 years, comparing 1970 to today, off someone's life expectancy in Botswana, where the assistant Democratic leader and I visited. It is a tough problem, one we can address together.

Mr. REID. Madam President, Botswana is a model democracy, a great country, great leadership, no corruption. I will respond briefly to the distinguished majority leader.

My last trip to Africa was a life-changing experience. I had been to other places, but to see the spread of AIDS was a life-changing experience for me, to see the orphans. The orphans are an epidemic in Africa. All these little kids have no parents, both parents having died from AIDS. To see the personal devastation of communities being wiped out and people not being educated is a terrible situation.

Having come to this body from the House of Representatives, I served there on the Foreign Affairs Committee. I agree with the distinguished majority leader, part of our job is to find out what is going on in the rest of the world, and I think our taxpayers are well paid by what we do here by our going and seeing what is going on in other parts of the world. We have responsibilities being the only superpower in the world. I am glad to see the majority leader does not cringe from the fact he has traveled, and he is trying to find out what is going on in other parts of the world. I believe, without any reservation or question, that those Senators who choose not to travel—and it is a personal decision, but I think it is a bad decision.

Mr. FRIST. Madam President, we were talking about Africa, but this little virus right here in Washington, DC, is killing people every day. When we talk about Africa, we use that as a model, at least for me. It could equally be Russia where the rate is probably the fastest growing in the world, or Haiti. Senator DEWINE constantly reminds us how Haiti has been devastated.

When we talk Africa, HIV/AIDS, we are really talking about a virus that knows no boundaries—Washington, DC, Nashville, TN, across the world—and that is important to research and development. If we kill the little virus, it

helps people here in the District, it helps people across this country, Haiti, India, Russia, and that is why it is so important; that is why we are pulling together the great science we have today. Once we get rid of the virus, it goes away across the world.

I did not intend to talk about this little virus except that it is so devastating.

Madam President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business, for statements only, with Senators permitted to speak for up to 10 minutes each.

RECOGNITION OF THE MINORITY LEADER

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

Mr. DASCHLE. I thank the Presiding Officer.

MIDDLE-CLASS SQUEEZE

Mr. DASCHLE. Madam President, over the course of the last several weeks, many of us have come to the floor to talk about the question raised by our former President, Ronald Reagan, back in the 1980 Presidential campaign. His question at that time, which we are told was paraphrased from a question posed by Franklin Roosevelt in 1934, was: ''Are you better off than you were four years ago?''

Unfortunately, in 2004, the answer to that question is all too clear for most middle-class Americans. Four years ago, our economy was booming. The stock market had reached record heights. Twenty-two million jobs had been created in 8 years. We built a record Federal surplus. And millions of American families enjoyed newfound prosperity and felt the optimism of even better times ahead.

Four years later, we have lost nearly 2 million private sector jobs, the stock market has dropped, record surpluses have turned to record deficits, and middle-class families are truly being squeezed.

This chart tells the story. Since President Bush came to office, wages have been stagnant. Average weekly earnings have not increased in the last 4 years, but the costs facing Americans have skyrocketed. Gas prices have increased 23 percent; college tuition has gone up 28 percent; and family health care premiums, as we can see from the chart, have actually increased 36 percent.

All that has come out of average weekly earnings, which have been stagnant.

This is not what was predicted. This certainly is not what the White House said would happen under its economic policies.

In his annual economic report released in February, the President predicted the economy would create 3.8 million jobs in 2004.

As of today, we are still 2.5 million jobs short of that goal. Even more troubling, the jobs being created today pay less than the jobs we have lost. And even Americans who have been fortunate enough to keep their jobs have failed to see the pay raises they need and they deserve.

Just this morning we received confirmation from the Department of Labor that working Americans are still being squeezed by this economy. In fact, the new numbers indicate the squeeze is actually getting worse. According to the Labor Department, real earnings in June fell $2.16, the second largest monthly drop in 14 years.

The Labor Department report also reveals what has happened over the past year. As this chart shows, the real earnings of our working people over this last year have actually decreased by 1.4 percent. They have less purchasing power today than they did in June 2003. But a typical commodity, a grocery that most families buy every week, milk, has gone up 30 percent. All this money is coming out of weekly earnings.

As people across the country know, gas prices have also risen dramatically. There was an article on the front page of the Wall Street Journal about this development. It concluded that at current prices, the average driver will pay nearly $300 more for gasoline this year than last year. And the story only gets worse when it comes to prescription drugs.

According to a recent report by the AARP, drug companies raised their prices for the top 200 brand-name drugs at nearly three times the rate of inflation in the first 3 months of 2004. Some of my colleagues on the other side of the aisle think these increases are less important to American families than the rise of gross domestic product, GDP. But Americans don't live on GDP, they live on earnings. That is what they use to pay for milk, gas, medicine, health insurance, and tuition. They live on earnings, and those earnings clearly are not keeping up with the costs they are facing today.

Remarkably, the administration's response to this problem has been to further undermine wages by limiting overtime rights. This week, an independent study showed that the White House's new overtime regulation, which goes into effect next month, will strip 6 million workers of their right to overtime. That is unacceptable. Democrats continue to fight at every opportunity to reverse the administration's misguided policy. Middle-class Americans are being squeezed, and the last thing they need is for their Government to make it worse.

What Congress should do is raise the minimum wage. It has been 8 years since we last voted to raise it. In that time it has become nearly impossible for minimum wage workers to make ends meet, especially when they are trying to raise a family. In my home State of South Dakota, a worker earning the minimum wage has to work 82 hours a week to afford rent for a two-bedroom apartment. And that is without taking into account other family costs, such as clothing, groceries, and health care.

Of course, not everyone in America is feeling the pinch. As this chart shows, while workers continue to struggle, our big corporations are thriving. In just the past year, corporate profits have risen 30 percent. The White House likes to talk about how we are now in an economic recovery. That is true for corporate America. But American workers are being left behind. As the New York Times recently reported, take-home pay, as a share of the economy, is at its lowest level since the Government started keeping track in 1929.

Economic policies that lead to these kinds of results don't do right by middle-class families, and they don't do right by America.

The good news is, we can do right by America. We proved during the Clinton administration that we can create millions of jobs, raise wages, and increase the quality of life for families all through the country. We did right by America then, and we can do it again.

With the help of the American people, and with some resolve by this body, we will do it again.

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

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

The legislative clerk proceeded to call the roll.

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

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

LEAK INVESTIGATION

Mr. HARKIN. Madam President, I have taken the last several days on a daily basis to come to the Senate floor to talk about the treacherous and damaging leak of the identity of a covert CIA operative by the name of Valerie Plame, leaked to a columnist by the

name of Robert Novak, reportedly by high-ranking White House officials. I spoke a number of times last year when the events occurred. I spoke about it before a special prosecutor was assigned to investigate. After that special prosecutor was assigned, I did not say much more because I believed things would take their course, the special prosecutor would do his job, and we would get to the bottom of this.

July 14 marked 1 year, and this being July 16, it is now 1 year and 2 days since we first learned of the exposing or the outing of Valerie Plame as a covert CIA operative.

That was the date 1 year ago when this columnist, Robert Novak, publicly exposed Ms. Plame. This was done in an act of political retribution because her husband, former Ambassador Joseph Wilson, published a column in the New York Times that questioned one of the key administration justifications for the war in Iraq; namely, that Iraq sought to buy yellow cake uranium ore from Niger.

Sadly, Republicans are still at it. They are fixated on Mr. Wilson. They are intent upon destroying his credibility. In columns and editorials and floor statements, the smear campaign continues. Their reason is they want to deflect and distract from the fact someone in the White House—high ranking—appears to have committed a crime, a treacherous crime.

I am not here to defend or criticize Joe Wilson. I have tried to follow the debate over his findings and statements and all that. Obviously, we are all concerned about finding out the facts about whether Saddam Hussein's government did try to obtain yellow cake uranium ore from Africa, the country of Niger, in the 1990s. That is a question of importance. But none of that has anything to do with the way we judge an illegal White House action that was used to undermine and endanger human intelligence resources, and was done only to disparage Mr. Wilson.

Here is the statute, and it is clear, 50 U.S.C., section 421. It says:

> Any person who has access to classified information that identifies a covert agent and intentionally discloses that information to an unauthorized person, knowing that the Government is seeking to keep the agent's identity concealed, shall be fined under Title 18 or imprisoned not more than 10 years, or both.

Robert Novak said it in his column. He said it was high-ranking White House officials who gave him the information. We know that one or two high-ranking White House officials called, I think, up to six reporters to give them that information. Interestingly enough, it was only Mr. Novak who published this in a column.

Mr. Novak has been around this town a long time. He also had to know this was a violation of law to come out with the name of a covert CIA agent. Yet Mr. Novak put that name in his column. Shame on Mr. Novak. I am not certain that it is totally unclear as to whether he could also be prosecuted under the same provisions of law, 50 U.S.C., section 421. He also identified a covert agent.

Now, under the law, there is no exception for cases where a spouse of the agent has questioned administration policy. It doesn't say in the law that a person could be fined under title 18 or imprisoned for not more than 10 years, or both, unless the spouse of the agent questioned the administration policy. It doesn't say that in the law.

I understand the ongoing investigation by prosecutor Fitzgerald has been somewhat thorough. However, I have repeatedly criticized the President and Vice President for refusing to settle the matter quickly, which they could have done a year ago. Again, I am calling for the special prosecutor to put the President and the Vice President under oath—put them under oath and film it.

This is what they did to President Clinton. The special prosecutor put him under oath and filmed it. We sat here in the Senate and watched it. That had to do with actually something, I guess, that wasn't even a crime. It may have been immoral, but it wasn't a crime—certain indiscretions committed by the President in the White House.

What are we talking about here? We are talking about the exposure of the identity of a covert CIA agent, destroying her credibility, putting at risk all of her contacts and people she had worked with around the world. And, as we have learned from other retired CIA agents, this also puts a cloud over all other covert CIA operatives who may think that sometime in the future they too could be outed. What about all of their contacts who may think that, well, gee, I know someone who was giving information to Ms. Plame. Now, they may know that person was giving information, and I may have another contact. Well, I guess I better not get involved in that because they may out my source or my contact, also.

I cannot emphasize enough the seriousness of this crime. Yet the President treated it rather cavalierly when he was asked about it. He said: You know, there are leaks all over the White House. It is a big administration. We may never find out who did it. And he smiled, as if this was not a big deal. It is a very big deal. Someone in the White House—to this Senator's thinking—committed treason. The number of people in the White House with access to this kind of information can be counted on one hand—OK, maybe two hands. Maybe there are 10 people. But what the President should have done was call them into his office, have them sign a piece of paper that they did not do this, put them under oath.

The President could have solved this in 24 hours. Yet he sort of dismissed it out of hand, as though it was not a big deal.

Well, that is why I think the President and the Vice President must be put under oath and asked about this. Perhaps they do know. Perhaps the President does know who leaked this information and is just covering it up. Perhaps the Vice President also knows and he is just covering it up.

You have to look at what happened and how this whole thing progressed, and why the administration obviously is trying to deflect this onto Mr. Wilson and others, because the chronology of events shows that the administration clearly knew these claims were not real. So you have to look at the chronology.

Let me summarize it and then I will go through it. Even after CIA Director Tenet told the White House not to use this information in a speech, and even after the State Department later came out and said that some of these documents were forgeries, even after the same individual who had talked to Director Tenet in October and had taken the words out of the speech—that same individual put those words back in the President's State of the Union Message 3 months later. Curious, very curious.

By the fall of 2002—let me put it more succinctly. In October of 2002, the White House sought to include the claim that Iraq had tried to buy uranium from Africa in a policy speech by the President in Cincinnati.

What did the CIA do? Here is the chronology. In February 2002, Joseph Wilson travels to Niger to find out whether Iraq had attempted to buy uranium ore. On October 5, 2002, after the President indicated he was going to give a speech in Cincinnati and these claims were in the speech, the CIA sends a memo to the National Security Council concerned about these uranium claims in the Cincinnati speech. That is October 5.

They must have clearly felt they were not being taken seriously, because the following day a second memo was sent that urged that the information be deleted because the evidence was weak and the CIA had told Congress that ''the Africa story was overblown, and this is one of the two issues where we differed with the British.''

They must have been still pretty seriously concerned because CIA Director Tenet personally calls Deputy National Security Adviser Stephen Hadley. He personally called him.

Get this, they send a memo on the 5th, they send a memo on the 6th, and the Director himself calls on the 6th. So obviously they were very concerned about it. Guess what. Mr. Stephen Hadley—keep that name in mind—Deputy National Security Adviser Stephen Hadley takes the claims out of the speech the President gives in Cincinnati.

Then on October 16, the State Department gets copies of uranium purchase documents and forwards them to the CIA. I am told this came from the Italians. I don't know if that is right or not, but that is what I was told. This is what they claim were forgeries. This is what our State Department analyst

tells the CIA later on, that the documents are likely forgeries.

On January 13, 2 weeks before the State of the Union, a State Department analyst sent an e-mail to the CIA about the documents, outlining his reasons why the uranium purchase agreement is probably a hoax. This is a State Department analyst who sends an e-mail to the CIA saying these are probably a hoax, forgeries.

So between the Cincinnati speech in October and the State of the Union speech in January, there is even more reason to doubt the credibility of these uranium purchase claims. Nonetheless, these mysterious 16 words—''The British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa''—were left in the State of the Union speech.

Here is where we come full circle. Who is the individual responsible for vetting national security issues before the State of the Union speech? Mr. Stephen Hadley oversees the State of the Union speech. Mr. Hadley was vetting national security concerns.

Let's loop back. It was Mr. Hadley who talked to Director Tenet in October and who got these memos saying these claims were not real. Stephen Hadley in October took them out of the Cincinnati speech. Mr. Hadley in January leaves them in the State of the Union speech. It is the same individual. He could not have forgotten this. He had to have known this.

Why, I ask, was this left in the State of the Union Message? Was it left in to help the President make his case for an invasion of Iraq? After being told it was dubious by the CIA Director himself, after the State Department said these were probably forgeries, the issue is, Why the White House still has not been held accountable for breaking the law and betraying the intelligence community by exposing Valerie Plame, all done in an attempt to discredit her husband Joseph Wilson and his criticism of the uranium claim.

The President says he did not know anything about it. Ken Lay of Enron last week claimed he did not know anything about what was going on in his company, either. He is the CEO, and what is his defense? ''I didn't know it was going on.'' Either the CEO of a corporation knows what is going on and he is not being truthful or he did not know anything about it. Either way, it is inexcusable. If the President of the United States says he did not know anything about it, that is inexcusable. If the President did know about it and left that claim in his State of the Union Message, that is inexcusable. Either way, the buck stops on President Bush's desk. It is time to quit passing the buck. It is time for the American people to learn who committed these crimes and to have these people prosecuted.

What is going to happen in the future if this is swept under the rug? Does that mean some other administration, the next one, whatever it may be, Democratic or Republican, that a President or his people under him in the White House can break the law and not be held accountable?

Again, I take you back several years to when President Clinton was put under oath and filmed. We watched it right here on the Senate floor during the impeachment proceedings. Regardless of how one may have felt about that, it sent a very powerful message to the American people: No President is above the law; no President is above the law, neither Mr. Clinton nor Mr. Bush.

So I ask, Why hasn't President Bush, why hasn't Vice President CHENEY been put under oath and asked these questions under oath? Again we will let the American people know that no President is above the law and no one who works for a President is above the law.

This is serious business. I see that in a column by Mr. Novak of July 15—Mr. Novak's whole column is about Joe Wilson—he said:

> It's as though the Niger question and Joe Wilson have vanished from the Earth.

No, they have not, Mr. Novak; no, they have not. But Mr. Novak is all on whether Mr. Wilson was telling the truth, whether he was misinterpreted, whether his wife recommended that he be sent to Niger. Nowhere is it claimed Ms. Plame was in a position of authority to actually send him to Niger, but Mr. Novak goes on about how a State Department analyst told the committee about an interagency meeting in 2002 by Wilson's wife who had recommended that he go there because he had contacts there.

What does all this mean? It means what Mr. Novak is trying to do is to take the focus off of a clear violation of the law by individuals in the White House in exposing a covert agent's identity; take it off that and focus it on all this stuff about whether she recommended her husband, or whether her husband gave an honest analysis. I am sorry, Mr. Novak, that is not the issue. The issue is, someone in the White House broke the law, clearly, unequivocally. The point is, the President of the United States has expressed not one iota of outrage. The point is, the President and the Vice President, neither one, have sought to get to the bottom of this. Neither the President nor the Vice President have been put under oath to be questioned about this.

The point is, Mr. Novak, a year and 2 days have passed, and this lawbreaking activity in the White House has not been dealt with. No one is saying Ms. Plame broke any law, violated any ethics. No one is claiming Mr. Wilson broke any law or violated any ethics. You can say they may have made a mistake, he may have been wrong, he may have been wrong in his analysis—fine. I am not saying he was right or wrong. I don't know. What I do know is, two individuals in the White House broke the law—to my way of thinking, basically committed treason—and no one is getting to the bottom of it. And Mr. Novak continues to try to deflect the attention from that, to try to talk about whether Mr. Wilson was right in his analysis.

That is not the point. You can debate that issue if you want. What is not debatable is that someone in the White House broke the law, and they should be held accountable.

As I took the floor yesterday and the day before and the day before, I take the floor today, and I will every day that we are in session, to ask that simple question: Why isn't the President coming clean? Why isn't he getting to the bottom of this? Why, 1 year and 2 days later, has nothing happened in the White House to find the identity of these lawbreakers? The sooner we get to the bottom of it, the sooner we can allow the criminal justice system to do its job.

I call upon the President and the Vice President to get to the bottom of this. I call upon the special prosecutor to put them under oath and to ask them these questions. That may be the only way we get to the bottom of it.

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

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

The legislative clerk proceeded to call the roll.

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

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

OBESITY IN AMERICA

Mr. FRIST. Mr. President, in a few minutes we will be closing out for the weekend. I will briefly comment on a couple of current issues before addressing some of the business before the Senate.

The first issue is a brief comment on President Bush's decision or his administration's decision yesterday to have the Federal Medicare Program recognize obesity as a disease.

Earlier today, we were talking about public health issues, and I mentioned in some African countries, because of an HIV/AIDS virus, the total length of life will be 33 years of age. In Botswana, if you were born in 1970, you would live 17 years longer than if you are born today because of that little virus. I mentioned that. That has gotten worse over the last 30 years, which we probably did not know anything about in this country until about 20 years ago. And it is getting much worse.

Another problem, very similar to that, is one that is apparent to anybody who has kids today and picks them up from school. If you just watch, you see the kids are much heavier than 20 years ago, 30 years ago. And that has lifelong consequences. It comes down to obesity.

There are many reasons for obesity, and I am not going to address all the

reasons now. But there are things we can do, and we have a real obligation to do.

It is a brand-new problem—or new in the last 20 years. It is getting worse and worse, and it condemns these kids to a life of poorer quality and shorter length. It is something we absolutely must address.

I applaud the administration's decision yesterday. What they did is said obesity—which before was this kind of vague syndrome or observation—is a disease, and when you call it a disease, people recognize it as a disease, and then you start looking at prevention, care, and treatment to reverse it. That is the significance.

Two things: First, for the first time, a major Federal health program recognizes obesity as a disease. It is a treatable disease—preventable but also treatable. The second is that it demonstrates, once again, that Secretary Thompson and the administration are taking extremely seriously the obesity epidemic which is occurring in this country.

The administration is attacking obesity on a multitude of fronts. It is needed. In my mind, it is long overdue that this Nation address this new but rapidly growing epidemic.

The Centers for Disease Control and Prevention—or the CDC, as we all know it—reports that because of poor nutrition and lack of physical activity, obesity is on its way of surpassing smoking as the leading killer in the United States of America. Obesity is on its way of surpassing smoking as the leading killer in the United States of America.

Obesity contributes to other diseases, the diseases in which I specialize; that is, heart conditions, heart disease. It also affects a whole range of issues: orthopedic, pulmonary injuries as well.

The immediate impact will be twofold. First of all, it will be easier for Medicare beneficiaries and individuals with disabilities who are Medicare beneficiaries to get treatment. The barrier to treatment will be lowered.

When Medicare makes a decision, it has a spillover impact to the private sector. I think the spillover impact will be substantial, although the private sector has already moved ahead. They have already increased reimbursement for appropriate treatment for obesity in many areas. But the fact that the Federal Government speaks with a loud voice will have an impact on the private sector.

The public and private sector have to be very cautious. We talk about this on the floor of the Senate every time there is a new definition of something that needs to be treated. We have to be very cautious in deciding which specific treatments to cover. We need to make sure the interventions are effective, but we need to also make sure they are cost effective.

There are several treatments now for obesity that are available. Science will allow us to determine which of these treatment modalities are most effective and which are most cost effective.

Also—this applies to the HIV/AIDS virus, which I mentioned earlier today, and to obesity, which I mention now—prevention is a critically important aspect of the equation. Early intervention, especially among children, is the key to preventing lifelong obesity and obesity-related illnesses.

Nonetheless, I want to applaud the administration for this bold step. It will help prevent obesity and greatly improve strategies for helping not only seniors and individuals with disabilities but all Americans.

SUDAN

Mr. FRIST. Mr. President, there is a second issue I want to mention that I addressed 2 weeks ago on the floor of the Senate and want to follow up on. It has to do with a tragic situation in Sudan, in the western part of Sudan in the three states of Darfur, Sudan.

The situation there, even over the last 3 weeks, has steadily deteriorated. We have hundreds of thousands of refugees that are currently at risk. We are entering the rainy season there, and that makes the delivery of relief supplies very difficult.

Since my comments on the floor of the Senate, Secretary of State Powell, in the first week of this month, went to the Darfur region and made observations and certain requests. At about the same time, Secretary General Kofi Annan also visited the region and made certain requests. Senator BROWNBACK, our distinguished colleague from Kansas, subsequent to their visit, also visited the region and made observations and with a video camera took some traumatic footage of the devastation going on there. Another delegation from the House will be going shortly.

We have to take action to address this humanitarian problem. The administration is working hard to get relief to these people who are suffering, but there is systematic violence that is going on against the civilian populations in Darfur by the government and by the militias that are supported by the government. That violence must come to an end.

I spend a lot of time in the Sudan and each year go to southern Sudan as part of medical mission work that I do. In the coming weeks or months, I will be returning to Sudan as part of this medical mission work. I look forward at that point in time to seeing if we are having an impact in both the southern part of the Sudan but also in the Darfur region and will report back to this body. Hopefully we will be able to report that we are making progress. Two million people are being affected by this crisis, so it is a large crisis. I do ask the Government of Sudan to take immediate steps to end the violence in that part of the world.

RETIREMENT OF POLICE CHIEF JERRY HOOVER

Mr. REID. Mr. President, I rise today to express my congratulations to Reno Police Chief Jerry Hoover on his retirement. The City of Reno and the State of Nevada owe this public servant a tremendous debt of gratitude for his hard work and strong dedication to law enforcement and the public safety.

Although Mr. Hoover spent 36 years in law enforcement, his service to our Nation in fact began with his combat service in Vietnam with the 101st Airborne Division. Since then he has dedicated his life to making our Nation's communities safer and has served admirably the people of San Diego, CA; Boulder, CO; St. Joseph, MO; and Reno, NV.

Chief Hoover provided strong and innovative leadership during a very challenging time for the Reno Police Department. Like police agencies throughout the country, the department under Chief Hoover's leadership has significantly expanded its responsibilities in recent years to meet our Nation's homeland security needs.

Reno's police officers have met this new challenge while also policing one of our Nation's fastest-growing metropolitan areas.

During his tenure, Chief Hoover helped create the Reno Model PTO training program that provides post-Academy police training with an emphasis on critical thinking and problem-solving. He also effectively drew on the resources of the entire Reno community to meet the city's law enforcement and public safety needs by initiating the Senior Auxiliary Volunteer Effort program, which trains volunteers 50 and older to assist with park and school patrols and special community projects.

Despite the demands of his position, Chief Hoover still found time to help train the next generation of law enforcement professionals through classes at the University of Nevada, Reno, and Nevada State College in Henderson. Even after his retirement from the Reno department, Chief Hoover will continue his lifelong commitment to effective law enforcement as a consultant to police agencies throughout the country.

Chief Hoover has led a distinguished career marked by generous service. Please join me in congratulating him on his retirement from the Reno Police Department and in wishing him luck in all his future endeavors.

HUMAN TRAFFICKING

Mrs. CLINTON. Mr. President, I rise today to highlight the scourge of human trafficking. Every day, in countries around the world and right here in the United States, people desperate for economic opportunity and seeking to follow their dreams of a better life are lured from home by the promises of jobs and security. Sadly, though, all too often they find themselves trapped in a nightmare, imprisoned by violent criminals, abused, violated, deceived, bought, and sold as chattel. Some of these victims of trafficking disappear, never seen nor heard from again.

Every year, traffickers strip thousands of people of their freedom and

imprison them in the dark underworld of prostitution, domestic servitude, sweat shops, and agricultural labor.

Trapped in debt bondage and faced with threats of physical harm to themselves or their families, trafficked persons have little choice but to try to work off their ballooning debts. Women forced into domestic servitude or sweatshop labor toil each day in abysmal, even dangerous conditions, earning no money and suffering physical and psychological abuse. And women and children trafficked into the sex industry constantly risk exposure to deadly diseases such as HIV and AIDS. Their only ''escape'' from the traffickers coming, if at all, is when the criminals discard them in the streets to die. This human trafficking is nothing short of modern day slavery.

Each year the United States publishes a report ranking countries for their failure to combat trafficking. Improvements have been made, but still the 2004 Trafficking In Persons Report estimates that 600,000–800,000 men, women, and children are trafficked worldwide across international borders; 14,500–17,500 are trafficked annually into the United States. This is even more chilling when one understands that these are new victims added each year to those whom traffickers have already ensnared. We must do better.

Last week, the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights focused on the most fundamental of all civil rights in their July 7 hearing ''Examining U.S. Efforts to Combat Human Trafficking and Slavery.'' And this week, representatives from NGOs and the Bush administration, including the Departments of Justice, State, and Homeland Security, are convening in Florida for the ''National Conference on Human Trafficking.'' It is heartening to see the work begun by the Clinton Administration continues to grow and strengthen.

The scourge of trafficking in women and children was a priority for me as First Lady and continues to be a priority for me as a U.S. Senator. I will do everything in my power to shine a light on this dark world that is so contrary to human dignity. Since the United Nations Fourth World Conference on Women in 1995, I have been working to raise awareness of the heinous practice of buying and selling women and children like commodities. I have seen the devastation it causes, and the lives and families it ruins. I remember very well crouching down by the chair of a 12-year-old girl who had been sold into prostitution by her own parents desperate for the income from that sale, only to have the child return home within a year, dying of AIDS. I have met other families who spend their nights at home worrying about what has happened to the daughter they haven't heard from since she went to the discotheque, or answered the ad to be a nanny or a clerk.

In the summer of 1997, I met with women leaders from Eastern and Central Europe, as well as victims' family members who, with tears in their eyes, pleaded with me for help in dealing with this growing problem. Later that year, in Lviv, Ukraine, I launched a new information campaign designed to warn young women about the dangers posed by traffickers. And in the fall of 1999, at the meeting of the Organization for Security and Cooperation in Europe held in Istanbul, Turkey, I announced a $1 million U.S. commitment to combat trafficking, and I called for greater economic opportunities to prevent young women from being driven into the hands of traffickers.

In recent years, beginning with the leadership of the Clinton administration, the U.S. has made great strides in understanding the horrors of trafficking. We have worked with other nations to combat those who try to reap profits from this horrible practice. In 1997, the United States, along with the European Union, formally launched a campaign to combat trafficking of women and girls and to warn potential victims of the risks. In March of 1998, President Clinton condemned human trafficking as a fundamental human rights violation and a growing organized crime problem. I joined the President, Secretary of State Albright, Attorney General Reno, U.N. Secretary General Kofi Annan, and a high-ranking member of the Thai government for a White House announcement of the first presidential directive to prevent and deter trafficking and to protect victims. At that time, the President directed his interagency Council on Women to coordinate the development and implementation of a three-part strategy that would: first, prevent trafficking; second, provide protection and assistance for trafficking victims; and third, prosecute traffickers. This comprehensive strategic framework later guided the development of the anti-trafficking legislation passed by Congress.

The Clinton administration's State Department began raising the issue with foreign governments at the highest levels. Formal and informal working partnerships were forged with several foreign governments to address this international crisis, including the Ukraine and Finland. At the G–8 meeting in 1997, Secretary of State Madeleine Albright initiated discussions that resulted in 1998 with President Clinton and Italian Prime Minister Prodi formally signing the first bilateral agreement to cooperate on such anti-trafficking efforts as data collection and information sharing, prevention, assistance and law enforcement. We began the first U.S. funding of anti-trafficking programs in countries such as the Philippines and Bangladesh. Back then, no anti-trafficking legislation had passed so these were necessarily modest amounts by comparison to U.S. funding now, but it was a needed start.

There was more. Embassies were tasked with reporting on human trafficking for the first time. And these assessments were included in the Department's annual Country Reports on Human Rights Practices. Prevention efforts included publishing awareness pamphlets that were translated into multiple languages and distributed in many consular offices around the world. At the same time, the U.S. undertook the first official estimates of the magnitude of human trafficking world-wide and domestically, and funded the creation of a database on U.S. and international legislation on trafficking. Law enforcement training was initiated at the International Law Enforcement Academy in Bangkok and Budapest and in countries such as Thailand, Bulgaria, Romania and Bosnia.

The Attorney General and the Secretary of Labor established an interagency Task Force to coordinate investigations and prosecutions of trafficking cases. Even prior to the passage of the 2000 anti-trafficking law, the Department of Justice used the legal tools available to successfully prosecute human traffickers. In 1995, the Department brought the seminal case of United States v. Manasurangkun against traffickers who enticed seventy-one women from Thailand to travel to the United States by promising them good wages, good working hours, and a better life. Upon their arrival in El Monte, CA, they were held in slavery behind barbed wire and forced to work up to twenty hour days and under the watch of guards. Women were imprisoned for up to 7 years before being rescued. This case was followed by other landmark cases such as United States v. Paoletti, United States v. Flores, United States v. Cadena and United States v. Mishulovich. These and other cases successfully prosecuted by the Justice Department ranging from sexual slavery to forced labor demonstrated the many manifestations of human trafficking, all of which must be addressed. Investigations resulting from the Justice Department's creation of the first national telephone line to receive calls to assist trafficking victims anywhere in the United States led to growing prosecutions. I am pleased that since the anti-trafficking legislation was passed and signed into law in 2000, prosecutions have continued to increase. Again, though, we need to do more to support increasing the capacity to undertake the investigations and prosecutions of these cases.

Just as the Clinton administration and international organizations were beginning to highlight trafficking in persons as an international crisis, Senator Paul Wellstone—one of the greatest champions of civil rights to sit in this chamber—also recognized this growing abuse of human rights. He introduced, with Senator DIANNE FEINSTEIN, a resolution in 1998 that called trafficking a global human rights problem and directed the State Department to review it and report its findings to

Congress. Congresswoman LOUISE SLAUGHTER introduced a companion resolution and the led the charge in the House to bring attention to this issue.

The Clinton administration worked with Senator Wellstone, his Republican co-sponsor, Senator BROWNBACK, and Congressman CHRIS SMITH and former Congressman Sam Gejdenson in the House, to introduce the first comprehensive anti-trafficking bill in Congress. This culminated in the passage of the Victims of Trafficking and Violence Protection Act of 2000.

I supported adoption of the strongest possible legislation to eradicate trafficking in persons, and I was personally invested in the effort. The Clinton administration worked continuously with Congress on a bi-partisan basis to craft a bill to achieve this objective. We sought to institutionalize the comprehensive strategic framework—the ''3 Ps''—that the Administration had been implementing as the core of the legislation. The resulting legislation incorporated prevention mechanisms and better and stronger prosecution, protection, and victim assistance tools. Upon its passage, President Clinton congratulated Congress and noted that this new law would lay the groundwork for future administrations to carry this important work forward, and would ensure that trafficking of persons assumes the prominent place on the world's agenda that it deserves until we put an end to this horrible practice. I believed then, and I believe now, that this is one of the Clinton administrations greatest achievements and one of the most important parts of Senator Wellstone's legacy. That law means the difference between freedom and enslavement for unknown numbers of potential trafficking victims for years to come.

I was also proud to support and work with Senator BROWNBACK on the passage of the Trafficking Victims Protection Reauthorization Act of 2003. I know that Senator Wellstone would welcome our work in the Senate, and CHRIS SMITH's continuing leadership in the House, as we fight one of the most egregious human rights violations, which Paul so passionately sought to bring to an end.

Looking forward, we must pursue concrete and pragmatic approaches to combating this evil. Our rhetoric must be matched by our actions so that the United States government's seven year record of progress and success can continue and intensify. The fight against trafficking, like the fight against all forms of violence, must be supported with comprehensive strategies effectively implemented and appropriately funded here and abroad. There is still much to be done.

The United States must do more to combat trafficking within our own shores. Trafficking victims exist in our midst, in towns large and small. We must target resources on training and equipping law enforcement authorities to identify trafficking victims, victims too often mischaracterized as ''illegal migrants'' and deported. And we must provide funds for NGOs working on the front lines in the United States to provide care and legal assistance to victims of all forms of trafficking.

I applaud and support State initiatives to combat trafficking. However, we must ensure that State and Federal authorities work cooperatively to combat this scourge. These welcome state efforts must augment the ongoing Federal fight against human trafficking. The Federal Government cannot retreat, but must do more to focus on victims nationwide. We must ensure that our Federal law enforcement authorities continue to have the financial and human resources necessary to investigate these crimes. We must further support our Federal, State, and local law enforcement, investigators, and prosecutors in efforts to mobilize in an integrated and coherent way to respond appropriately to the organized criminal enterprises of human trafficking who still operate with relative impunity here and around the world. We must ensure that we adopt a consistent and coordinated national response to these human rights violations.

Without witness protection and an appreciation of the risks that trafficking victims face in testifying against the perpetrators of these horrible crimes, the prosecution record will not improve. Conferences are a beginning, but not an end in themselves.

We must do more to tailor specific responses to the special needs of the children who are trafficked, especially in terms of care and protection. Root causes such as economic deprivation demand and warrant growing attention. There are no short-term fixes. The incidence of retrafficking among children, many who have attempted to flee homes of violence and abuse or have been sold by their families, must be addressed.

Finally, the Senate must ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention against Transnational Organized Crime. The United States played a major role in developing this new international law on trafficking. Through the annual TIP reports we have communicated our expectation to the world that all countries will join in our fight against human trafficking. Now, for the sake of our own credibility abroad, we must show our own commitment to abide by international norms on trafficking.

The TIP report is a powerful tool for combating trafficking around the world. The threat of economic sanctions has inspired many countries to ramp up their efforts to combat trafficking within and across their borders. We must work closely in partnership with countries who are striving to do better and maintain the pressure on countries who are not. Meeting minimum standards is not enough. We must not shy away from ranking as Tier 3 those countries that fail to do their part in the global fight against trafficking.

The simple fact is that we must do better in terms of demanding effectiveness of our programs and the significant funds that are spent by our government in the U.S. and around the world. There is no question that we are making progress, but we must do better for the sake of the victims of trafficking who try to endure, waiting and praying for our intervention in their nightmare. Every day, more women and girls are being sold into the sex industry, domestic servitude, sweatshop labor, debt bondage, and other forms of modern-day slavery. And more and more men, women, and children are being forced into various forms of manual labor, without any pay or any protection. These crimes are violations of human rights and human dignity, and the United States will not rest until they are stopped.

I am pleased that President Bush has carried on our country's commitment to combat human trafficking. The progress we have made to date has been the result of strong bipartisan efforts that brought the horrors of trafficking to light. I hope we will continue to address this challenge in a bipartisan way.

With the passage of important legislation and Congress's appropriation of much-needed funds to address this problem we have the opportunity to accomplish many things around the world and here at home to reduce human trafficking that we could only dream of before. The administration has declared its intention to spend $150 million over the next two years to reduce human trafficking. Support for these efforts is needed now more than ever because of the stark reality that in the four years since the legislation was signed into law there nevertheless remains no evidence that human trafficking is diminishing.

It was Senator Wellstone who observed that despite some progress on human trafficking we must be impatient for better results. I believe that the need to be impatient is now more urgent than ever. In the fight against trafficking in persons, patience simply is not an option. We are making progress, but there is still so much more that needs to be done.

No country has done more than the United States to bring worldwide trafficking out of the shadows and into the glare of public attention, and I am committed to doing whatever I can to help continue that leadership. I look forward to working with the administration and both sides of the aisle on additional improvements to the current legislation and effective strategies for implementing it internationally and domestically.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2828. An act to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 2678. A bill to ensure that Members of Congress do not receive better prescription drug benefits than medicare beneficiaries.

S. 2679. A bill to strengthen anti-terrorism investigative tools, promote information sharing, punish terrorist offenses, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, June 16, 2004, she had presented to the President of the United States the following enrolled billed:

S. 15. An act to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute and with an amended preamble:

S.J. Res. 41. A joint resolution commemorating the opening of the National Museum of the American Indian.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

[Treaty Doc. 108–10 Convention on International Interests in Mobile Equipment and Protocol to Convention on International Interests in Mobile Equipment (Exec. Rept. No. 108–14)]

TEXT OF COMMITTEE-REPORTED RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION TO THE TREATY

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARATIONS.

The Senate advises and consents to the ratification of the Convention on International Interests in Mobile Equipment (hereafter in this resolution referred to as the ''Convention'') and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (hereafter in this resolution referred to as the ''Protocol''), concluded at Cape Town, South Africa, November 16, 2001 (T. Doc. 108–10), subject to the declarations of section 2 and section 3.

SEC. 2. DECLARATIONS RELATIVE TO THE CONVENTION

The advice and consent of the Senate under section 1 is subject to the following declarations relative to the Convention:

(1) Pursuant to Article 39 of the Convention—

(A) all categories of non-consensual rights or interests which under United States law have and will in the future have priority over an interest in an object equivalent to that of the holder of a registered international interest shall to that extent have priority over a registered international interest, whether in or outside insolvency proceedings; and

(B) nothing in the Convention shall affect the right of the United States or that of any entity thereof, any intergovernmental organization in which the United States is a member State, or other private provider of public services in the United States to arrest or detain an aircraft object under United States law for payment of amounts owed to any such entity, organization, or provider directly relating to the services provided by it in respect of that object or another object.

(2) Pursuant to Article 54 of the Convention, all remedies available to the creditor under the Convention or Protocol which are not expressed under the relevant provision thereof to require application to the court may be exercised, in accordance with United States law, without leave of the court.

SEC. 3. DECLARATIONS RELATIVE TO THE PROTOCOL.

The advice and consent of the Senate under section 1 is subject to the following declarations relative to the Protocol:

(1) Pursuant to Article XXX of the Protocol—

(A) the United States will apply Article VIII of the Protocol;

(B) the United States will apply Article XII of the Protocol; and

(C) the United States will apply Article XIII of the Protocol.

(2)(A) Pursuant to Article XIX of the Protocol—

(i) the Federal Aviation Administration, acting through its Aircraft Registry, FAA Aeronautical Center, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma 73125, shall be the entry point at which information required for registration in respect of airframes or helicopters pertaining to civil aircraft of the United States or aircraft to become a civil aircraft of the United States shall be transmitted, and in respect of aircraft engines may be transmitted, to the International Registry; and

(ii) the requirements of chapter 441 of title 49, United States Code, and part 49 of title 14, Code of Federal Regulations, shall be fully complied with before such information is transmitted at the Federal Aviation Administration to the International Registry.

(B) For purposes of the designation in subparagraph (A)(i) and the requirements in subparagraph (A)(ii), information is transmitted at the Federal Aviation Administration in accordance with procedures established under United States law.

(C) In this paragraph, the term ''civil aircraft of the United States'' has the meaning given that term in section 40102(17) of title 49, United States Code.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DAYTON:

S. 2678. A bill to ensure that Members of Congress do not receive better prescription drug benefits than medicare beneficiaries; read the first time.

By Mr. KYL (for himself, Mr. CORNYN, Mr. NICKLES, Mr. CHAMBLISS, Mr. SESSIONS, Mr. FRIST, and Mr. MCCONNELL):

S. 2679. A bill to strengthen anti-terrorism investigative tools, promote information sharing, punish terrorist offenses, and for other purposes; read the first time.

By Mr. FITZGERALD (for himself and Mr. AKAKA):

S. 2680. A bill to provide for certain financial reporting requirements to apply to certain small executive branch agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SANTORUM (for himself and Mr. CORNYN):

S. 2681. A bill to establish a program to support a transition to democracy in Iran; to the Committee on Foreign Relations.

By Mr. ALLARD:

S. 2682. A bill to designate the facility of the United States Postal Service located at 222 West 8th Street, Durango, Colorado, as the ''Ben Nighthorse Campbell Post Office Building''; to the Committee on Governmental Affairs.

ADDITIONAL COSPONSORS

S. 1129

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1801

At the request of Mrs. MURRAY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1801, a bill to promote the economic security and safety of victims of domestic and sexual violence, and for other purposes.

S. 2280

At the request of Mr. STEVENS, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2280, a bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration.

S. 2382

At the request of Mr. INOUYE, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2382, a bill to establish grant programs for the development of telecommunications capacities in Indian country.

S. 2411

At the request of Mr. DODD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2411, a bill to amend the Federal Fire Prevention and Control Act of 1974 to provide financial assistance for the improvement of the health and safety of firefighters, promote the use of life saving technologies, achieve greater equity for departments serving large jurisdictions, and for other purposes.

At the request of Mr. DEWINE, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2411, supra.

S. 2488

At the request of Mr. INOUYE, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 2488, a bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes.

S. 2528

At the request of Mr. KENNEDY, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2528, a bill to restore civil liberties under the First Amendment, the Immigration and Nationality Act, and the Foreign Intelligence Surveillance Act, and for other purposes.

S. 2568

At the request of Mr. BIDEN, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2628

At the request of Mr. AKAKA, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2628, a bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

S. 2639

At the request of Mr. LIEBERMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2639, a bill to reauthorize the Congressional Award Act.

S. 2657

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2657, a bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM (for himself and Mr. CORNYN):

S. 2681. A bill to establish a program to support a transition to democracy in Iran; to the Committee on Foreign Relations.

Mr. SANTORUM. Mr. President, I rise today to offer remarks about a bill that Senator CORNYN of Texas and I have introduced, the Iran Freedom and Support Act of 2004. This legislation seeks to promote the transformation of the Islamic Republic of Iran to a democratic form of government.

Our bill expresses the sense of the Congress that it should be the policy of the United States to support regime change in Iran and that the U.S. government should promote the transition to a new democratic Iranian government. In addition, so as to help make this transition possible, our bill authorizes the President to provide up to $10 million in assistance to qualified foreign and domestic pro-democracy groups opposed to the non-democratic government of Iran. To maximize the efforts of these pro-democracy groups, our bill authorizes activities such as aid to pro-democracy radio and television broadcasting organizations as a way of directly reaching the people of Iran.

For many years now, the people of Iran have dramatically demonstrated their desire for greater social and political freedoms. Literally millions of Iranians have massed in the streets of the major cities, demanding the right to choose their form of government and their own leaders. Even public opinion polls conducted by the dictatorial regime show upwards of seventy percent of Iranians want democratic change. But Iran remains in the grip of a brutal tyranny that has silenced dissident voices by arbitrary arrests, closure of newspapers and magazines, destruction of satellite television dishes, widespread torture and the second-highest execution rate in the world.

Our bill seeks to help the Iranian people achieve freedom by supporting pro-democracy groups and enabling freedom-supporting Farsi language radio and television broadcasting stations to broadcast information directly to Iran.

The current leaders of the Islamic Republic of Iran are not only brutal tyrants. Their support of anti-American elements and terrorist organizations poses a direct threat to the interests of the United States and our allies. For two decades, the Department of State has identified Iran as THE leading sponsor of international terrorism. Iran has been linked to the deaths of United States military personnel in Beirut, Lebanon, and Saudi Arabia. Iran has long provided financial and operational assistance to Hezbollah and is presently the leading state sponsor of Hamas and Islamic Jihad, who conduct lethal attacks against the citizens of Israel.

Finally, Iran may be engaged in a crash program to develop nuclear weapons. In October 2003, after strong and concerted pressure by the international community, Iran agreed to sign an agreement to suspend uranium enrichment and open its nuclear facilities to more intrusive international inspections. Despite this pledge, Iran has repeatedly withheld key information and documentation about its clandestine nuclear efforts. In February 2004, blueprints containing instructions for building a type of gas centrifuge known as the P2, a super-efficient machine used in producing enriched uranium, were discovered. The Iranians had not revealed these plans.

Additionally, the International Atomic Energy Agency (IAEA) has found multiple traces of highly-enriched uranium, with no civilian use, at a Kalaye Electric Company workshop in Tehran and at the Natanz pilot fuel enrichment plant 150 miles south of the Iranian capital. To the best of my knowledge, Iran has not offered a satisfactory explanation as to the IAEA's discovery of this materiel.

Reports are that Iran has sought magnets for thousands of such gas centrifuges. Also, Iran has not been able to explain experiments with polonium-210, a radioactive element primarily useful as a bomb trigger. Finally, Iranian government officials have barred access to selected sites for a period of time while—as recent satellite imagery shows—they almost certainly sanitized them of incriminating evidence.

I believe it urgent for the United States to support regime change in Iran. Without regime change, Iran will soon constitute the world's leading supporter of terrorism armed with nuclear weapons. That would be a great catastrophe for the Middle East, and for the United States and our democratic allies everywhere.

The bill I have introduced with Senator CORNYN will facilitate this change by reaching out to the people of Iran and supporting what President Bush and Secretary of State Powell have called the legitimate desire of the Iranian people to be free.

By Mr. ALLARD:

S. 2682. A bill to designate the facility of the United States Postal Service located at 222 West 8th Street, Durango, Colorado, as the ''Ben Nighthorse Campbell Post Office Building''; to the Committee on Governmental Affairs.

Mr. ALLARD. Mr. President, I send to the desk legislation designate the U.S. Post Office located at 222 West 8th Street in Durango, CO, as the Ben Nighthorse Campbell Post Office Building.

My dear friend and colleague, BEN NIGHTHORSE CAMPBELL was born in Auburn, CA on April 13, 1933. His mother, Mary Vierra, was a Portuguese immigrant, and his father, Albert Campbell, was a Northern Cheyenne Indian.

At a young age, BEN developed a passion for the then newly budding sport

of judo. Overcoming numerous, seemingly insurmountable obstacles as a youngster, in college he became the youngest person in the United States to hold the fourth degree black belt. He went on to study in Japan with the most respected judo masters. BEN was never short on determination. One student in particular, was a menacing opponent. He kept his photo on the wall of his room, and shouted to it often, ''I will beat you!''—and he finally did.

BEN was named to the U.S. Olympic Judo team in 1964, but an injury caused him to collapse on the floor during the match, which yielded his opponent the bronze medal by default. Ben went on to bring the sport of judo into a specialized system for kids, teaching them self discipline, self control and self respect, as he established one of the first successful clubs for kids.

With CAMPBELL's determination and magnanimous spirit, it was only natural that he enter the political arena where his perseverance has in fact left its mark on American history. CAMPBELL likes to view himself as a person of passion and this passion has rattled more than a few formidable foes. As the only American Indian in Congress he found himself, de facto, the representative of all Indians throughout the United States. In his time on the Indian Affairs Committee, he got more legislation passed for Indians than anyone in the Nation's history.

BEN is also a renowned jewelry designer, athlete, former truck driver, and trainer of champion quarter horses. He has been married to his wife, Linda, for more than 35 years. He is the father of two grown children, Colin Campbell and Shanan Longfellow. He is a proud grandfather to Luke and Saylor Longfellow and Lauren Campbell.

BEN has been one of the most fascinating figures on the political scene, and will be deeply missed when he retires. I am proud to call him friend. It is only fitting that we can honor his legacy by naming this post office after him.

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. 2682

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BEN NIGHTHORSE CAMPBELL POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 222 West 8th Street, Durango, Colorado, shall be known and designated as the ''Ben Nighthorse Campbell Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Ben Nighthorse Campbell Post Office Building''.

By Mr. FITZGERALD (for himself and Mr. AKAKA):

S. 2683. A bill to provide for certain financial reporting requirements to apply to certain small executive branch agencies, and for other purposes; to the Committee on Governmental Affairs.

Mr. FITZGERALD. Mr. President, I am joined today by Senator DANIEL K. AKAKA in introducing the Financial Accountability Expansion Act of 2004, which would ensure the fiscal accountability of Federal entities. This bill would strengthen Federal financial management by subjecting all Federal entities in the Executive Branch to the stringent financial audit requirements that currently apply to most cabinet level departments and major agencies.

Congressional efforts to improve financial management and to reduce the waste, fraud, and abuse of taxpayer dollars began almost 25 years ago with the enactment of the Federal Managers Financial Integrity Act of 1982, which intended to strengthen internal controls and accounting systems. Another important financial management reform initiative was the Chief Financial Officers Act (CFO) of 1990. Among other things, the CFO Act created 24 CFO and deputy CFO positions in cabinet departments and major Executive Branch agencies, and required the annual preparation and audit of financial statements.

I would briefly like to mention that the Department of Homeland Security, which is now the third largest Federal department, is the only cabinet level department that is not subject to the CFO Act. Therefore, on August 1, 2003, Senator AKAKA and I introduced S. 1567, the Department of Homeland Security Financial Accountability Act, that would subject the Department to the same financial management practices currently required of all other major Federal agencies. We are pleased that the Senate passed this bill, as amended, and the House of Representatives is expected to pass its version of the bill in the near future.

The CFO Act improved the financial management of cabinet departments and major Federal agencies; however, it did not address the fiscal policies and practices of the rest of the Executive Branch. Therefore, in 2002, I was the Senate sponsor of the Accountability of Tax Dollars Act (ATDA). This Act, which became law on November 7, 2002, amended the CFO Act to require agencies with budget authority of over $25 million to prepare annual financial statements and have them independently audited. Due to the enactment of the ATDA, an additional 76 agencies are now subject to requirements for annually audited financial statements.

The ATDA also provided authority to the Director of the Office of Management and Budget (OMB) to waive or exempt certain agencies from the Act's requirements. The OMB Director may waive these requirements during the first two years of implementation if an agency lacks the budgeted resources or requires additional time to develop financial management practices and systems. The OMB Director may exempt agencies with budget authority under $25 million if it is determined that there is an absence of risk associated with the agency's operations.

To improve upon the legislative changes Congress passed in 2002, the Financial Accountability Expansion Act of 2004 would further expand the audit requirements of the CFO Act to every remaining Federal entity in the Executive Branch. Each Executive Branch agency or entity, regardless of its size or budget authority, would be subject to the financial oversight and accountability that annual audits of financial statements provide. In order to assist small agencies that may not have adequate financial resources or personnel to comply with these requirements, this bill would authorize the Secretary of the Treasury to enter into one or more contracts on behalf of the agency, or multiple agencies through ''bundling,'' for the preparation and independent audit of the financial statement.

The bill also would require OMB to conduct a thorough assessment and submit a report to Congress regarding those Federal entities not currently required to prepare financial statements and have them independently audited. This study is necessary to ensure that OMB and Congress have an accurate and complete picture of the breadth and depth of the gaps in the financial accountability of the Executive Branch.

Senator AKAKA and I have long had an interest in ensuring that the Federal Government operates effectively and efficiently, and does not waste taxpayer dollars through poor fiscal management. The independent audits of financial statements that this bill would require of the entire Executive Branch would strengthen the fiscal accountability of the entire Federal Government and reduce the opportunities for waste, fraud, and abuse.

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. 2683

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 ''Financial Accountability Expansion Act of 2004''.

SEC. 2. FINANCIAL STATEMENT REQUIREMENT FOR CERTAIN SMALL AGENCIES.

(a) IN GENERAL.—Section 3515 of title 31, United States Code, is amended—

(1) in subsection (a), by striking ''(1)''; and

(2) by striking subsection (e) and inserting the following:

''(e) The Director of the Office of Management and Budget shall determine which covered executive agencies have size or budgetary limitations that do not support the internal preparation of a financial statement required under this section. The Director of

the Office of Management and Budget shall inform the Secretary of the Treasury of such determination, and for such agencies, the Secretary of the Treasury shall prepare the financial statement, or enter into a contract for the preparation of such statement, and shall enter into a contract with 1 or more independent auditors to audit the financial statement required under this section. All requirements of this section shall apply with respect to audited financial statements prepared under this subsection.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 2 of the Accountability of Tax Dollars Act of 2002 (31 U.S.C. 3515 note; Public Law 107–289) is amended by striking subsection (b).

SEC. 3. CERTAIN FEDERAL ENTITIES WITHOUT ANNUAL AUDITED FINANCIAL STATEMENT REQUIREMENTS.

(a) DEFINITION.—In this section, the term ''Federal entity'' means any entity established in the executive branch, including such an entity that administers a special purpose program or any other entity established by presidential or departmental directive that is not required to prepare an annual audited financial statement.

(b) ANNUALLY AUDITED FINANCIAL STATEMENTS.—The Office of Management and Budget shall require each Federal entity that is not statutorily required to prepare an annual financial statement and have the statement independently audited, to submit an annually audited financial statement prepared in accordance with United States generally accepted auditing principles to the Office of Management and Budget.

(c) REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit a report described under paragraph (2) to the—

(A) Committee on Governmental Affairs of the Senate; and

(B) Committee on Government Reform of the House of Representatives.

(2) CONTENT.—The report under paragraph (1) shall include—

(A) a list of each Federal entity as defined under subsection (a); and

(B) actions taken by the Office of Management and Budget to implement subsection (b).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act in fiscal year 2005, and each fiscal year thereafter.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3565. Mr. FRIST (for Mr. DEWINE (for himself and Mr. GRAHAM of Florida)) proposed an amendment to the bill S. 2261, to expand certain preferential trade treatment for Haiti.

TEXT OF AMENDMENTS

SA 3565. Mr. FRIST (for Mr. DEWINE (for himself and Mr. GRAHAM of Florida)) proposed an amendment to the bill S. 2261, to expand certain preferential trade treatment for Haiti, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Haiti Economic Recovery Opportunity Act of 2004''.

SEC. 2. TRADE BENEFITS TO HAITI.

(a) IN GENERAL.—The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 213 the following new section:

''SEC. 213A. SPECIAL RULE FOR HAITI.

''(a) IN GENERAL.—In addition to any other preferential treatment under this Act, beginning on October 1, 2003, and in each of the 7 succeeding 1-year periods, apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from Haiti shall enter the United States free of duty, subject to the limitations described in subsections (b) and (c), if Haiti has satisfied the requirements and conditions set forth in subsections (d) and (e).

''(b) APPAREL ARTICLES DESCRIBED.—Apparel articles described in this subsection are apparel articles that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns without regard to the country of origin of the fabrics, components, or yarns.

''(c) PREFERENTIAL TREATMENT.—The preferential treatment described in subsection (a), shall be extended—

''(1) during the 12-month period beginning on October 1, 2003, to a quantity of apparel articles that is equal to 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States during the 12-month period beginning October 1, 2002; and

''(2) during the 12-month period beginning on October 1 of each succeeding year, to a quantity of apparel articles that is equal to the product of—

''(A) the percentage applicable during the previous 12-month period plus 0.5 percent (but not over 3.5 percent); and

''(B) the aggregate square meter equivalents of all apparel articles imported into the United States during the 12-month period that ends on September 30 of that year.

''(d) ELIGIBILITY REQUIREMENTS.—Haiti shall be eligible for preferential treatment under this section if the President determines and certifies to Congress that Haiti is meeting the conditions of subsection (e) and that Haiti—

''(1) has established, or is making continual progress toward establishing—

''(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

''(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

''(C) the elimination of barriers to United States trade and investment, including by—

''(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

''(ii) the protection of intellectual property; and

''(iii) the resolution of bilateral trade and investment disputes;

''(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through microcredit or other programs;

''(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

''(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

''(2) does not engage in activities that undermine United States national security or foreign policy interests; and

''(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

''(e) CONDITIONS REGARDING ENFORCEMENT OF CIRCUMVENTION.—

''(1) IN GENERAL.—The preferential treatment under subsection (b) shall not apply unless the President certifies to Congress that Haiti is meeting the following conditions:

''(A) Haiti has adopted an effective visa system, domestic laws, and enforcement procedures applicable to articles described in subsection (b) to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States.

''(B) Haiti has enacted legislation or promulgated regulations that would permit the Bureau of Customs and Border Protection verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country.

''(C) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, on the total exports from and imports into that country of articles described in subsection (b), consistent with the manner in which the records are kept by Haiti.

''(D) Haiti agrees to cooperate fully with the United States to address and take action necessary to prevent circumvention.

''(E) Haiti agrees to require all producers and exporters of articles described in subsection (b) in that country to maintain complete records of the production and the export of the articles, including materials used in the production, for at least 2 years after the production or export (as the case may be).

''(F) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, documentation establishing the country of origin of articles described in subsection (b) as used by that country in implementing an effective visa system.

''(2) DEFINITIONS.—In this subsection:

''(A) CIRCUMVENTION.—The term 'circumvention' means any action involving the provision of a false declaration or false information for the purpose of, or with the effect of, violating or evading existing customs, country of origin labeling, or trade laws of the United States or Haiti relating to imports of textile and apparel goods, if such action results—

''(i) in the avoidance of tariffs, quotas, embargoes, prohibitions, restrictions, trade remedies, including antidumping or countervailing duties, or safeguard measures; or

''(ii) in obtaining preferential tariff treatment.''.

''(B) TRANSSHIPMENT.—The term 'transshipment' has the meaning given such term under section 213(b)(2)(D)(iii).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2003.

(2) RETROACTIVE APPLICATION TO CERTAIN ENTRIES.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed

with the United States Customs Service before the 90th day after the date of the enactment of this Act, any entry or withdrawal from warehouse for consumption, of any goods described in the amendment made by subsection (a)—

(A) that was made on or after October 1, 2003, and before the date of the enactment of this Act, and

(B) with respect to which there would have been no duty if the amendment made by subsection (a) applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such amendment applied to such entry or withdrawal.

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Ramey Ko of my staff be granted the privilege of the floor for the duration of today's session.

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

AMERICAN JOBS CREATION ACT OF 2004

On Thursday, July 15, 2004, the Senate passed H.R. 4520, as follows:

H.R. 4520

Resolved, That the bill from the House of Representatives (H.R. 4520) entitled ''An Act to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Jumpstart Our Business Strength (JOBS) Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(B) The table of subparts for such part III is amended by striking the item relating to subpart E.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking ''114 or''.

(4) Section 275(a) is amended—

(A) by inserting ''or'' at the end of paragraph (4)(A), by striking ''or'' at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of''; and inserting:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of'', and

(B) by striking subparagraph (B).

(6) Section 903 is amended by striking ''114, 164(a),'' and inserting ''164(a)''.

(7) Section 999(c)(1) is amended by striking ''941(a)(5),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) REVOCATION OF SECTION 943(e) ELECTIONS.—

(1) IN GENERAL.—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

(ii) no gain or loss shall be recognized on such transfer.

(2) EXCEPTION.—Subparagraph (B)(ii) of paragraph (1) shall not apply to gain on any asset held by the revoking corporation if—

(A) the basis of such asset is determined in whole or in part by reference to the basis of such asset in the hands of the person from whom the revoking corporation acquired such asset,

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

(C) a principal purpose of the acquisition was the reduction or avoidance of tax (other than a reduction in tax under section 114 of such Code, as in effect on the day before the date of the enactment of this Act).

(e) GENERAL TRANSITION.—

(1) IN GENERAL.—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term ''current FSC/ETI beneficiary'' means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

Years:	The phaseout percentage is:
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2004.—The phaseout percentage for 2004 shall be the amount that bears the same ratio to 80 percent as the number of days after the date of the enactment of this Act bears to 366.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer's taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the taxpayer's taxable years beginning in calendar years 2000, 2001, and 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term ''FSC/ETI benefit'' means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(8) COORDINATION WITH BINDING CONTRACT RULE.—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2004 shall be treated as being equal to 100 percent.

(9) SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary's base period amount for calendar year 2004, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

SEC. 102. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

"SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

''(a) ALLOWANCE OF DEDUCTION.—

''(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

''(2) PHASEIN.—In the case of taxable years beginning in 2004, 2005, 2006, 2007, or 2008, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

"Taxable years beginning in:	The transition percentage is:
2004, 2005, or 2006	5
2007	6
2008	7.

''(b) DEDUCTION LIMITED TO WAGES PAID.—

''(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the employer for the taxable year.

''(2) W–2 WAGES.—For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the taxpayer's taxable year.

''(3) SPECIAL RULES.—

''(A) PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level. The preceding sentence shall not apply to any entity all of the ownership interests of which are held directly or indirectly by members of the same expanded affiliated group.

''(B) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

''(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified production activities income' means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

''(2) REDUCTION FOR TAXABLE YEARS BEGINNING BEFORE 2013.—The amount otherwise determined under paragraph (1) (the 'unreduced amount') shall not exceed—

''(A) in the case of taxable years beginning before 2010, the product of the unreduced amount and the domestic/worldwide fraction, and

''(B) in the case of taxable years beginning in 2010, 2011, or 2012, an amount equal to the sum of—

''(i) the product of the unreduced amount and the domestic/worldwide fraction, plus

''(ii) the applicable percentage of an amount equal to the unreduced amount minus the amount determined under clause (i).

For purposes of subparagraph (B)(ii), the applicable percentage is 25 percent for 2010, 50 percent for 2011, and 75 percent for 2012.

''(d) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

''(1) IN GENERAL.—The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed—

''(A) the taxpayer's domestic production gross receipts for such taxable year, reduced by

''(B) the sum of—

''(i) the costs of goods sold that are allocable to such receipts,

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

''(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

''(3) SPECIAL RULES FOR DETERMINING COSTS.—

''(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

''(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

''(4) MODIFIED TAXABLE INCOME.—The term 'modified taxable income' means taxable income computed without regard to the deduction allowable under this section.

''(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(A) any sale, exchange, or other disposition of, or

''(B) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(2) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualifying production property described in subsection (f)(1)(C)—

''(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

''(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

''(3) GROSS RECEIPTS FROM USE OF FILMS AND VIDEO TAPE.—In the case of any qualifying production property which is property described in section 168(f)(3) produced in whole or in significant part by the taxpayer within the United States (determined after application of paragraph (2)), domestic production gross receipts shall include gross receipts derived by the taxpayer from the use of the property by the taxpayer.

''(f) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

''(1) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualifying production property' means—

''(A) any tangible personal property,

''(B) any computer software, and

''(C) any property described in section 168(f)(3) or (4), including any underlying copyright or trademark.

''(2) EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'qualifying production property' shall not include—

''(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

''(B) oil or gas,

''(C) electricity,

''(D) water supplied by pipeline to the consumer,

''(E) utility services, or

''(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

Subparagraph (F) shall not apply to property described in section 168(f)(3) to the extent of the gross receipts from the use of the property to which subsection (e)(3) applies (determined after application of this sentence).

''(g) DOMESTIC/WORLDWIDE FRACTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'domestic/worldwide fraction' means a fraction (not greater than 1)—

''(A) the numerator of which is the value of the domestic production of the taxpayer, and

''(B) the denominator of which is the value of the worldwide production of the taxpayer.

''(2) VALUE OF DOMESTIC PRODUCTION.—The value of domestic production is the excess (if any) of—

''(A) the domestic production gross receipts, over

''(B) the cost of purchased inputs allocable to such receipts that are deductible under this chapter for the taxable year.

''(3) PURCHASED INPUTS.—

''(A) IN GENERAL.—Purchased inputs are any of the following items acquired by purchase:

''(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

''(ii) Items consumed in connection with such activities.

''(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

''(B) SPECIAL RULE.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

''(4) VALUE OF WORLDWIDE PRODUCTION.—

''(A) IN GENERAL.—The value of worldwide production shall be determined under the principles of paragraph (2), except that—

''(i) worldwide production gross receipts shall be taken into account, and

''(ii) paragraph (3)(B) shall not apply.

''(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.—The worldwide production gross receipts is the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

''(h) DEFINITIONS AND SPECIAL RULES.—

''(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

''(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

''(B) the Secretary shall prescribe rules for the application of this section, including rules relating to—

''(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

''(ii) additional reporting requirements.

''(2) PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

''(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385 (a)—

''(i) is received by a person from an organization to which part I of subchapter T applies which is engaged—

''(I) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

''(II) in the marketing of agricultural or horticultural products, and

''(ii) is allocable to the portion of the qualified production activities income of the organization which, but for this paragraph, would be deductible under subsection (a) by the organization and is designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed a deduction under subsection (a) with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

''(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section—

''(i) there shall not be taken into account in computing the organization's modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

''(ii) in the case of an organization described in subparagraph (A)(i)(II), the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

''(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

''(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

''(B) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined—

''(i) by substituting '50 percent' for '80 percent' each place it appears, and

''(ii) without regard to paragraphs (2) and (4) of section 1504(b).

For purposes of determining the domestic/worldwide fraction under subsection (g), clause (ii) shall be applied by also disregarding paragraphs (3) and (8) of section 1504(b).

''(4) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

''(5) ORDERING RULE.—The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

''(6) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

''(7) POSSESSIONS, ETC.—

''(A) IN GENERAL.—For purposes of subsections (d) and (e), the term 'United States' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

''(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.—For purposes of applying the limitation under subsection (b) for any taxable year—

''(i) the determination of W–2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

''(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

''(8) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

''(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

''(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.

''(9) SEPARATE APPLICATION TO FILMS AND VIDEOTAPE.—

''(A) IN GENERAL.—In the case of qualifying production property described in section 168(f)(3), the deduction under this section shall be determined separately with respect to qualified production activities income of the taxpayer allocable to each of the following markets with respect to such property:

''(i) Theatrical.

''(ii) Broadcast television (including cable, foreign, pay-per-view, and syndication).

''(iii) Home video.

''(B) RULES FOR SEPARATE DETERMINATION.—Except as provided in subparagraph (C)—

''(i) any computation required to determine the amount of the deduction with respect to any of the markets described in subparagraph (A) shall be made by only taking into account items properly allocable to such market, including the computation of qualified production activities income, modified taxable income, and the domestic/worldwide fraction, and

''(ii) such items shall not be taken into account in determining the deduction with respect to either of the other 2 markets or with respect to qualified production activities income of the taxpayer not allocable to any of such markets.

''(C) WAGE LIMITATION.—This paragraph shall not apply for purposes of subsection (b) and subsection (b) shall be applied after the application of this paragraph.''

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

''(v) DEDUCTION FOR DOMESTIC PRODUCTION.—Clause (i) shall not apply to any amount allowable as a deduction under section 199.''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 199. Income attributable to domestic production activities.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 15.—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION ACTIVITIES INCLUDES INCOME RELATED TO CERTAIN ARCHITECTURAL AND ENGINEERING SERVICES.

(a) IN GENERAL.—Paragraph (1) of section 199(e) (relating to domestic production gross receipts), as added by section 102, is amended to read as follows:

''(1) IN GENERAL.—

''(A) RECEIPTS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(i) any sale, exchange, or other disposition of, or

''(ii) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(B) RECEIPTS FROM CERTAIN SERVICES.—

''(i) IN GENERAL.—Such term also includes the applicable percentage of gross receipts of the taxpayer which are derived from any engineering or architectural services performed in the United States for construction projects in the United States.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined under the following table:

''In the case of any taxable year beginning in—	***The applicable percentage is—***
2004, 2005, 2006, 2007, or 2008	*25*
2009, 2010, 2011, or 2012	*50*
2013 or thereafter	*100.*

(b) LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES WITH RESPECT TO COVERED EMPLOYEES.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

''(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities—

''(A) in the case of a covered employee (within the meaning of section 162(m)(3)), to the extent that the expenses do not exceed the amount of the expenses treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such covered employee on the taxpayer's return of tax under this chapter and as wages to such covered employee for purposes of chapter 24 (relating to withholding of income tax at source on wages), and

''(B) in the case of any other employee, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act, and section 15 of the Internal Revenue Code of 1986 shall apply to the amendment made by this subsection as if it were a change in the rate of tax.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to expenses incurred after the date of the enactment of this Act and before January 1, 2006.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) GENERAL RULE.—Section 904(c) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking ''in the second preceding taxable year,'', and

(2) by striking '', and in the first, second, third, fourth, or fifth'' and inserting ''and in any of the first 20''.

(b) EXCESS EXTRACTION TAXES.—Paragraph (1) of section 907(f) is amended—

(1) by striking ''in the second preceding taxable year,'',

(2) by striking '', and in the first, second, third, fourth, or fifth'' and inserting ''and in any of the first 20'', and

(3) by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

''(4) LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

''(A) IN GENERAL.—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

''(i) the portion of earnings and profits attributable to income described in such subparagraph, to

''(ii) the total amount of earnings and profits.

''(B) EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.—In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

''(C) SPECIAL RULES.—For purposes of this paragraph—

''(i) EARNINGS AND PROFITS.—

''(I) IN GENERAL.—The rules of section 316 shall apply.

''(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

''(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

''(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

''(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding ''and'' at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: ''Such term does not include any financial services income.''.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting ''or (4)'' after ''paragraph (3)'' in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking ''(D), or (E)'' and inserting ''or (D)''.

(6) Section 864(d)(5)(A)(i) is amended by striking ''(C)(iii)(III)'' and inserting ''(C)(iii)(II)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking ''and if section 59(a)(2) did not apply''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

''(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

''(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

''(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

''(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

''(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

''(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

''(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

''(B) INCOME CATEGORY.—For purposes of this paragraph, the term 'income category' has the meaning given such term by subsection (f)(5)(E)(i).

''(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking ''section 904(g)(6)'' and inserting ''section 904(h)(6)''.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking ''section 904(f)'' and inserting ''subsections (f) and (g) of section 904''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 205. INTEREST EXPENSE ALLOCATION RULES.

(a) ELECTION TO ALLOCATE ON WORLDWIDE BASIS.—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

''(1) ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.—

''(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

''(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

''(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

''(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

''(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

''(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

''(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

''(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members

of the affiliated group were a single corporation. For purposes of the preceding sentence, the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

''(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

''(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

''(B) DESCRIPTION.—A corporation is described in this subparagraph if—

''(i) such corporation is a financial institution described in section 581 or 591,

''(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

''(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

''(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

''(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

''(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

''(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

''(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

''(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

''(i) are members of such worldwide affiliated group, but

''(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

''(B) FINANCIAL CORPORATION.—For purposes of this paragraph, the term 'financial corporation' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(C)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

''(C) ANTIABUSE RULES.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

''(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

''(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

''(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

''(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

''(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

''(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

''(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term 'pre-election worldwide affiliated group' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

''(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term 'electing financial institution group' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

''(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

''(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

''(ii) preventing assets or interest expense from being taken into account more than once, and

''(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

''(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.''.

(b) EXPANSION OF REGULATORY AUTHORITY.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'', and

(2) by striking ''and'' at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

''(F) preventing assets or interest expense from being taken into account more than once, and''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.

(a) IN GENERAL.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

''(i) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

''(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or''.

(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954 is amended by adding after paragraph (3) the following new paragraph:

''(4) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

''(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term 'commodity hedging transaction' means any transaction with respect to a commodity if such transaction—

''(i) is a hedging transaction as defined in section 1221(b)(2), determined—

''(I) without regard to subparagraph (A)(ii) thereof,

''(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

''(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, and

''(ii) is clearly identified as such in accordance with section 1221(a)(7).

''(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.''.

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting ''and transactions involving physical settlement'' after ''(including hedging transactions''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004.

Subtitle B—International Tax Simplification

SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

''(5) a foreign corporation,'',

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting ''and'' at the end of paragraph (7) (as so redesignated), and

(D) by striking ''; and'' at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

''(I) PERSONAL SERVICE CONTRACTS.—

''(i) Amounts received under a contract under which the corporation is to furnish personal services if—

''(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

''(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

''(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting ''and'' at the end of subparagraph (F), by striking subparagraph (G), and by redesignating subparagraph (H) as subparagraph (G), and

(B) by striking ''a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or'' in paragraph (11)(C)(iii).

(2) Section 163(e)(3)(B), as amended by section 453(a) of this Act, is amended by striking ''which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or'' and inserting ''which is a controlled foreign corporation (as defined in section 957) or''.

(3) Paragraph (2) of section 171(c) is amended—

(A) by striking '', or by a foreign personal holding company, as defined in section 552'', and

(B) by striking '', or foreign personal holding company''.

(4) Paragraph (2) of section 245(a) is amended by striking ''foreign personal holding company or''.

(5) Section 267(a)(3)(B), as amended by section 453(a) of this Act, is amended by striking ''to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or'' and inserting ''to a controlled foreign corporation (as defined in section 957) or''.

(6) Section 312 is amended by striking subsection (j).

(7) Subsection (m) of section 312 is amended by striking '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)''.

(8) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Subparagraph (B) of section 465(c)(7) is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(10) Paragraph (1) of section 543(b) is amended by inserting ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(11) Paragraph (1) of section 562(b) is amended by striking ''or a foreign personal holding company described in section 552''.

(12) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking ''subsection (a), (b), or (c)'' in subsection (c) (as so redesignated) and inserting ''subsection (a) or (b)''.

(13) Subsection (d) of section 751 is amended by adding ''and'' at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking ''paragraph (1), (2), or (3)'' in paragraph (3) (as so redesignated) and inserting ''paragraph (1) or (2)''.

(14) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(15)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

''(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and''.

(B) Subparagraph (B) of section 898(b)(2) is amended by striking ''and sections 551(f) and 554, whichever are applicable,''.

(C) Paragraph (3) of section 898(b) is amended to read as follows:

''(3) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).''.

(D) Subsection (c) of section 898 is amended to read as follows:

''(c) DETERMINATION OF REQUIRED YEAR.—

''(1) IN GENERAL.—The required year is—

''(A) the majority U.S. shareholder year, or

''(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

''(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

''(3) MAJORITY U.S. SHAREHOLDER YEAR.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'majority U.S. shareholder year' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

''(i) each United States shareholder described in subsection (b)(2)(A), and

''(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

''(B) TESTING DAY.—The testing days shall be—

''(i) the first day of the corporation's taxable year (determined without regard to this section), or

''(ii) the days during such representative period as the Secretary may prescribe.''.

(16) Clause (ii) of section 904(d)(2)(A) is amended to read as follows:

''(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term 'passive income' includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).''.

(17)(A) Subparagraph (A) of section 904(g)(1), as redesignated by section 204, is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(g), as so redesignated, is amended by striking ''FOREIGN PERSONAL HOLDING OR''.

(18) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(19) Paragraph (3) of section 989(b) is amended by striking '', 551(a),''.

(20) Paragraph (5) of section 1014(b) is amended by inserting ''and before January 1, 2005,'' after ''August 26, 1937,''.

(21) Subsection (a) of section 1016 is amended by striking paragraph (13).

(22)(A) Paragraph (3) of section 1212(a) is amended to read as follows:

''(3) SPECIAL RULES ON CARRYBACKS.—A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

''(A) for which it is a regulated investment company (as defined in section 851), or

''(B) for which it is a real estate investment trust (as defined in section 856).''.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004.

(23) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(24) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(26)(A) Subparagraph (F) of section 1291(b)(3) is amended by striking ''551(d), 959(a),'' and inserting ''959(a)''.

(B) Subsection (e) of section 1291 is amended by inserting ''(as in effect on the day before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act)'' after ''section 1246''.

(27) Paragraph (2) of section 1294(a) is amended to read as follows:

''(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.''.

(28) Section 6035 is hereby repealed.

(29) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(30) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

''(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.''.

(31) Subsection (a) of section 6679 is amended—

(A) by striking ''6035, 6046, and 6046A'' in paragraph (1) and inserting ''6046 and 6046A'', and

(B) by striking paragraph (3).

(32) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking ''556(b)(2),'' each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(34) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(35) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(2) SUBSECTION (c)(29).—The amendments made by subsection (c)(29) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUBPART F.

(a) IN GENERAL.—Clause (ii) of section 954(b)(3)(A) (relating to de minimis, etc., rules) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(b) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 864(d)(5)(A) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(2) Clause (i) of section 881(c)(5)(A) is amended by striking ''$1,000,000'' and inserting ''$5,000,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.''.

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking ''any individual'' and inserting ''any person''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS.

(a) IN GENERAL.—Section 263A(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(7) FOREIGN PERSONS.—Except for purposes of applying sections 871(b)(1) and 882(a)(1), this section shall not apply to any taxpayer who is not a United States person if such taxpayer capitalizes costs of produced property or property acquired for resale by applying the method used to ascertain the income, profit, or loss for purposes of reports or statements to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by this section to change its method of accounting for its first taxable year beginning after December 31, 2004—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first year.

SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

''(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON ALIENS PRESENT IN THE UNITED STATES FOR 183 DAYS OR MORE.

(a) IN GENERAL.—Subsection (a) of section 871 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENT.—Section 1441(g) is amended is amended by striking ''section 871(a)(3)'' and inserting ''section 871(a)(2)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

Subtitle C—Additional International Tax Provisions

SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND VESSELS.

(a) IN GENERAL.—Section 954(c)(2) is amended by adding at the end the following new subparagraph:

''(D) CERTAIN RENTS, ETC.—

''(i) IN GENERAL.—Foreign personal holding company income shall not include qualified leasing income derived from or in connection with the leasing or rental of any aircraft or vessel.

''(ii) QUALIFIED LEASING INCOME.—For purposes of this subparagraph, the term 'qualified leasing income' means rents and gains derived in the active conduct of a trade or business of leasing with respect to which the controlled foreign corporation conducts substantial activity, but only if—

''(I) the leased property is used by the lessee or other end-user in foreign commerce and predominantly outside the United States, and

''(II) the lessee or other end-user is not a related person (as defined in subsection (d)(3)).

Any amount not treated as foreign personal holding income under this subparagraph shall not be treated as foreign base company shipping income.''.

(b) CONFORMING AMENDMENT.—Section 954(c)(1)(B) is amended by inserting ''or (2)(D)'' after ''paragraph (2)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES.

(a) IN GENERAL.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

''(5) LOOK-THRU IN THE CASE OF RELATED CONTROLLED FOREIGN CORPORATIONS.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person (as defined in subsection (b)(9)) shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income (as defined in section 952). For purposes of this paragraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 954(c) (defining foreign personal holding company income), as amended by this Act, is amended by adding after paragraph (5) the following new paragraph:

''(6) LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.—

''(A) IN GENERAL.—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

''(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term '25-percent owner' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE RATE FOR FOREIGN TAX PAID OTHER THAN IN FUNCTIONAL CURRENCY.

(a) IN GENERAL.—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation's earnings and profits) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

''(D) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—

''(i) IN GENERAL.—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

''(ii) APPLICATION TO QUALIFIED BUSINESS UNITS.—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

''(iii) ELECTION.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.

(a) IN GENERAL.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—

''(i) IN GENERAL.—A taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

''(ii) ELECTION IRREVOCABLE.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

''(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

''(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

''(ii) the activity is performed in the home country of the related person, and

''(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking ''and'' at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

''(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

''(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

''(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

''(M) an obligation of a United States person which—

''(i) is not a domestic corporation, and

''(ii) is not—

''(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

''(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.''.

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking ''and (K)'' in the last sentence and inserting '', (K), and (L)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST PAID BY FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 861(a) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) IN GENERAL.—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

''(F) CERTAIN DISTRIBUTIONS.—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

''(i) shall not be included in computing such shareholder's long-term capital gains, and

''(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

''SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

''(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—If a corporation elects the application of this section, a tax shall be imposed on the taxpayer in an amount equal to 5.25 percent of—

''(1) the taxpayer's excess qualified foreign distribution amount, and

''(2) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount.

Such tax shall be imposed in lieu of the tax imposed under section 11 or 55 on the amounts described in paragraphs (1) and (2) for the taxable year.

''(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'excess qualified foreign distribution amount' means the excess (if any) of—

''(A) the aggregate dividends received by the taxpayer during the taxable year which are—

''(i) from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid, and

''(ii) described in a domestic reinvestment plan which—

''(I) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividends and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

''(II) provides for the reinvestment of such dividends in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation, over

''(B) the base dividend amount.

''(2) BASE DIVIDEND AMOUNT.—The term 'base dividend amount' means an amount designated under subsection (c)(7), but not less than the average amount of dividends received during the fixed base period from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid.

''(3) FIXED BASE PERIOD.—

''(A) IN GENERAL.—The term 'fixed base period' means each of 3 taxable years which are among the 5 most recent taxable years of the taxpayer ending on or before December 31, 2002, determined by disregarding—

''(i) the 1 taxable year for which the taxpayer had the highest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years, and

''(ii) the 1 taxable year for which the taxpayer had the lowest amount of dividends from such corporations relative to the other 4 taxable years.

''(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then in lieu of applying subparagraph (A), the fixed base period shall include all the taxable years of the taxpayer ending on or before December 31, 2002.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DIVIDENDS.—The term 'dividend' has the meaning given such term by section 316, except that the term shall include amounts described in section 951(a)(1)(B), but shall not include amounts described in sections 78 and 959.

''(2) CONTROLLED FOREIGN CORPORATIONS AND UNITED STATES SHAREHOLDERS.—The term 'controlled foreign corporation' has the meaning given such term by section 957(a) and the term 'United States shareholder' has the meaning given such term by section 951(b).

''(3) FOREIGN TAX CREDITS.—The amount of any income, war, profits, or excess profit taxes

paid (or deemed paid under sections 902 and 960) or accrued by the taxpayer with respect to the excess qualified foreign distribution amount for which a credit would be allowable under section 901 in the absence of this section, shall be reduced by 85 percent. No deduction shall be allowed under this chapter for the portion of any tax for which credit is not allowable by reason of the preceding sentence.

''(4) FOREIGN TAX CREDIT LIMITATION.—For purposes of section 904, there shall be disregarded 85 percent of—

''(A) the excess qualified foreign distribution amount,

''(B) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount, and

''(C) the amounts (including assets, gross income, and other relevant bases of apportionment) which are attributable to the excess qualified foreign distribution amount which would, determined without regard to this section, be used to apportion the expenses, losses, and deductions of the taxpayer under section 861 and 864 in determining its taxable income from sources without the United States.

For purposes of applying subparagraph (C), the principles of section 864(e)(3)(A) shall apply.

''(5) TREATMENT OF ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of section 41(f)(3) shall apply in the case of acquisitions or dispositions of controlled foreign corporations occurring on or after the first day of the earliest taxable year taken into account in determining the fixed base period.

''(6) TREATMENT OF CONSOLIDATED GROUPS.—Members of an affiliated group of corporations filing a consolidated return under section 1501 shall be treated as a single taxpayer for purposes of this section.

''(7) DESIGNATION OF DIVIDENDS.—Subject to subsection (b)(2), the taxpayer shall designate the particular dividends received during the taxable year from 1 or more corporations which are controlled foreign corporations in which it is a United States shareholder which are dividends excluded from the excess qualified foreign distribution amount. The total amount of such designated dividends shall equal the base dividend amount.

''(8) TREATMENT OF EXPENSES, LOSSES, AND DEDUCTIONS.—Any expenses, losses, or deductions of the taxpayer allowable under subchapter B—

''(A) shall not be applied to reduce the amounts described in subsection (a)(1), and

''(B) shall be applied to reduce other income of the taxpayer (determined without regard to the amounts described in subsection (a)(1)).

''(d) ELECTION.—

''(1) IN GENERAL.—An election under this section shall be made on the taxpayer's timely filed income tax return for the first taxable year (determined by taking extensions into account) ending 120 days or more after the date of the enactment of this section, and, once made, may be revoked only with the consent of the Secretary.

''(2) ALL CONTROLLED FOREIGN CORPORATIONS.—The election shall apply to all corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder during the taxable year.

''(3) CONSOLIDATED GROUPS.—If a taxpayer is a member of an affiliated group of corporations filing a consolidated return under section 1501 for the taxable year, an election under this section shall be made by the common parent of the affiliated group which includes the taxpayer and shall apply to all members of the affiliated group.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary and appropriate to carry out the purposes of this section, including regulations under section 55 and regulations addressing corporations which, during the fixed base period or thereafter, join or leave an affiliated group of corporations filing a consolidated return.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only to the first taxable year of the electing taxpayer ending 120 days or more after the date of the enactment of this Act.

SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND DOG RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

''(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.''.

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking ''(5), (6), and (7)'' and inserting ''(6), (7), and (8)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act.

SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.

(a) IN GENERAL.—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

''(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

''(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.''.

(b) WITHHOLDING.—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(1) by striking ''For purposes'' and inserting the following:

''(1) GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For purposes'', and

(2) by adding at the end the following new paragraph:

''(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

''(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

''(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 881 is amended by striking ''GUAM AND VIRGIN ISLANDS CORPORATIONS'' in the heading and inserting ''POSSESSIONS''.

(2) Paragraph (1) of section 881(b) is amended by striking ''IN GENERAL'' in the heading and inserting ''GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid after the date of the enactment of this Act.

SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS AND THE APPELLATE BODY.

Not later than March 31, 2004, the Secretary of Commerce, in consultation with the United States Trade Representative, shall transmit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, regarding whether dispute settlement panels and the Appellate Body of the World Trade Organization have—

(1) added to or diminished the rights of the United States by imposing obligations or restrictions on the use of antidumping, countervailing, and safeguard measures not agreed to under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards;

(2) appropriately applied the standard of review contained in Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994; or

(3) exceeded their authority or terms of reference under the Agreements referred to in paragraph (1).

SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS ON TAXPAYERS OTHER THAN LARGE CORPORATIONS.

(a) STUDY.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subsection (a), including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

SEC. 236. DELAY IN EFFECTIVE DATE OF FINAL REGULATIONS GOVERNING EXCLUSION OF INCOME FROM INTERNATIONAL OPERATION OF SHIPS OR AIRCRAFT.

Notwithstanding the provisions of Treasury regulation §1.883–5, the final regulations issued by the Secretary of the Treasury relating to income derived by foreign corporations from the international operation of ships or aircraft (Treasury regulations §1.883–1 through §1.883–5) shall apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after December 31, 2004.

SEC. 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DISQUALIFIED GUARANTEE HAS NO ECONOMIC EFFECT.

(a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating to exceptions to disqualified guarantee) is amended—

(1) by striking ''or'' at the end of subclause (I),

(2) by striking the period at the end of subclause (II) and inserting '', or'',

(3) by inserting after subclause (II) the following new subclause:

''(III) in the case of a guarantee by a foreign person, to the extent of the amount that the taxpayer establishes to the satisfaction of the Secretary that the taxpayer could have borrowed from an unrelated person without the guarantee.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees issued on or after the date of the enactment of this Act.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

Subtitle A—General Provisions

SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.

(a) IN GENERAL.—Subparagraph (F) of section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended to read as follows:

''(F) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to any issue, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

''SEC. 191. BROADBAND EXPENDITURES.

''(a) TREATMENT OF EXPENDITURES.—

''(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

''(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

''(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified broadband expenditure' means, with respect to any taxable year, any direct or indirect costs incurred and properly taken into account with respect to—

''(A) the purchase or installation of qualified equipment (including any upgrades thereto), and

''(B) the connection of such qualified equipment to any qualified subscriber.

''(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

''(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after the date of the enactment of this Act.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after the date of the enactment of this Act by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i), which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation

broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) any residential subscriber.

''(15) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(16) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(17) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(18) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(19) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(20) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(21) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(23) UNDERSERVED AREA.—The term 'underserved area' means—

''(A) any census tract which is located in—

''(i) an empowerment zone or enterprise community designated under section 1391, or

''(ii) the District of Columbia Enterprise Zone established under section 1400, or

''(B) any census tract—

''(i) the poverty level of which is at least 30 percent (based on the most recent census data), and

''(ii) the median family income of which does not exceed—

''(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

''(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

''(24) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

''(f) SPECIAL RULES.—

''(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of the cost of any property specified in an election under section 179.

''(2) BASIS REDUCTION.—

''(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

''(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).''.

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—A mutual or cooperative telephone company which for the taxable year satisfies the requirements of section 501(c)(12)(A) may elect to reduce its unrelated business taxable income for such year, if any, by an amount that does not exceed the qualified broadband expenditures which would be taken into account under section 191 for such year by such company if such company was not exempt from taxation. Any amount which is allowed as a deduction under this paragraph shall not be allowed as a deduction under section 191 and the basis of any property to which this paragraph applies shall be reduced under section 1016(a)(29).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) (relating to capital expenditures) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 191.''.

(2) Section 1016(a) of such Code is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 191(f)(2).''.

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

''Sec. 191. Broadband expenditures.''.

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after the date of the enactment of this Act and before the date which is 12 months after the date of the enactment of this Act.

SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS UNDER SECTION 263A.

(a) IN GENERAL.—Section 263A(f) of the Internal Revenue Code of 1986 (relating to general exceptions) is amended by adding at the end the following new paragraph:

''(5) EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS.—For purposes of this subsection, the production period for distilled spirits shall be determined without regard to any period allocated to the natural aging process.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production periods beginning after the date of the enactment of this Act.

SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.

(a) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

''(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation's separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

''(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

''(A) it is engaged in the active conduct of a trade or business,''.

(2) Section 355(b)(2) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) to distributions after the date of the enactment of this Act, and

(B) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation elects not to have such paragraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

SEC. 305. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

''(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

''(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

''(i) section 6416(b)(3) shall not apply, and

''(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

''(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

''(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

''(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting ''(other than broadheads)'' after ''point'', and

(2) by striking ''ARROWS.—'' in the heading and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act.

SEC. 306. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.''.

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of value-added processing involving animals, see section 1388(k).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 307. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking ''or'' at the end of subparagraph (B) and by adding at the end the following new subparagraph:

''(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

SEC. 308. TEMPORARY SUSPENSION OF PERSONAL HOLDING COMPANY TAX.

(a) IN GENERAL.—Section 541 (relating to imposition of personal holding company tax) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply with respect to any taxable year to which section 1(h)(11) (as in effect on the date of the enactment of this sentence) applies.''.

(b) COORDINATION WITH ACCUMULATED EARNINGS TAX.—Section 532(b) is amended by adding at the end the following flush sentence:

''Paragraph (1) shall not apply to any taxable year to which section 541 does not apply.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 309. INCREASE IN SECTION 179 EXPENSING.

(a) IN GENERAL.—Section 179(b)(2) (relating to reduction in limitation) is amended by inserting ''50 percent of'' before ''the amount''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 310. FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES.

(a) IN GENERAL.—Subparagraph (H) of section 172(b)(1) is amended—

(1) by inserting ''5-YEAR CARRYBACK OF CERTAIN LOSSES.—'' after ''(H)'', and

(2) by striking ''or 2002'' and inserting '', 2002, or 2003''.

(b) RULES RELATING TO CERTAIN EXTENDED NET OPERATING LOSSES.—Section 172 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) RULES RELATING TO CERTAIN EXTENDED NET OPERATING LOSSES.—In the case of a taxpayer which has a net operating loss for any taxable year ending during 2003 and does not make an election under subsection (j), such taxpayer shall be treated as having made an election under paragraphs (4)(E) and (2)(C)(iii) of section 168(k) with respect to all classes of property for such taxable year.

(c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYOVERS.—Section 56(d)(1)(A)(ii)(I) (relating to general rule defining alternative tax net operating loss deduction) is amended—

(1) by striking ''or 2002'' and inserting '', 2002, or 2003'', and

(2) by striking ''and 2002'' and inserting '', 2002, and 2003''.

(d) TECHNICAL CORRECTIONS.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking ''a taxpayer which has''.

(2) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107–147) is amended by striking ''before January 1, 2003'' and inserting ''after December 31, 1990''.

(3)(A) Subclause (I) of section 56(d)(1)(A)(i) is amended by striking ''attributable to carryovers''.

(B) Subclause (I) of section 56(d)(1)(A)(ii) is amended—

(i) by striking ''for taxable years'' and inserting ''from taxable years'', and

(ii) by striking ''carryforwards'' and inserting ''carryovers''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to net operating losses for taxable years ending after December 31, 2002.

(2) TECHNICAL CORRECTIONS.—The amendments made by subsection (d) shall take effect as if included in the amendments made by section 102 of the Job Creation and Worker Assistance Act of 2002.

(3) ELECTION.—In the case of a net operating loss for a taxable year ending during 2003—

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 15, 2004, and

(B) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before November 15, 2004.

(4) SPECIAL RULE FOR TAXPAYERS WITH TAXABLE YEARS ENDING DURING JANUARY.—Any taxpayer which has a taxable year ending during January may elect under this paragraph to apply section 172(b)(1)(H) of the Internal Revenue Code of 1986 (as amended by this section) to its taxable year ending in 2004 rather than its taxable year ending in 2003. If such election is made, then section 172(k) of such Code (as added by this section) shall be applied to the taxpayer's taxable year ending in 2004. Such election shall be made in such manner and at such time as may be prescribed by the Secretary of the Treasury. Such election, once made, shall be irrevocable.

SEC. 311. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relating to termination) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(b) INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking ''2.65 percent'' and inserting ''3 percent'',

(2) by striking ''3.2 percent'' and inserting ''4 percent'', and

(3) by striking ''3.75 percent'' and inserting ''5 percent''.

(c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.—

(1) IN GENERAL.—Subsection (c) of section 41 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

''(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

''(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

''(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

''(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

''(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.''

(2) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(A) IN GENERAL.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following: ''An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.''

(B) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by paragraph (1)) for such year.

(f) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to amounts paid or incurred after the date of the enactment of this Act.

(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) shall apply to taxable years beginning after December 31, 2004.

SEC. 312. EXPANSION OF RESEARCH CREDIT.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41(a) (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to a research consortium.''.

(2) RESEARCH CONSORTIUM DEFINED.—Section 41(f) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) RESEARCH CONSORTIUM.—

''(A) IN GENERAL.—The term 'research consortium' means any organization—

''(i) which is—

''(I) described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct research, or

''(II) organized and operated primarily to conduct research in the public interest (within the meaning of section 501(c)(3)),

''(ii) which is not a private foundation,

''(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for research, and

''(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for research.

''(B) TREATMENT OF PERSONS.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).''.

(3) CONFORMING AMENDMENT.—Section 41(b)(3)(C) is amended by inserting ''(other than a research consortium)'' after ''organization''.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

''(D) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to—

''(I) an eligible small business,

''(II) an institution of higher education (as defined in section 3304(f)), or

''(III) an organization which is a Federal laboratory,

for qualified research, subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

''(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term 'Federal laboratory' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2004.

SEC. 313. MANUFACTURER'S JOBS CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

''SEC. 45S. MANUFACTURER'S JOBS CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the manufacturer's jobs credit determined under this section is an amount equal to 50 percent of the lesser of the following:

''(1) The excess of the W–2 wages paid by the taxpayer during the taxable year over the W–2 wages paid by the taxpayer during the preceding taxable year.

''(2) The W–2 wages paid by the taxpayer during the taxable year to any employee who is an eligible TAA recipient (as defined in section 35(c)(2)) for any month during such taxable year.

''(3) 22.4 percent of the W–2 wages paid by the taxpayer during the taxable year.

''(b) LIMITATION.—

''(1) IN GENERAL.—If there is an excess described in paragraph (2)(A) for any taxable year, the amount of credit determined under subsection (a) (without regard to this subsection)—

''(A) if the value of domestic production determined under section 199(g)(2) for the taxable year does not exceed such value for the preceding taxable year, shall be zero, and

''(B) if subparagraph (A) does not apply, shall be reduced (but not below zero) by the applicable percentage of such amount.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means, with respect to any taxable year, the percentage equal to a fraction—

''(A) the numerator of which is the excess (if any) of the modified value of worldwide production of the taxpayer for the taxable year over such modified value for the preceding taxable year, and

''(B) the denominator of which is the excess (if any) of the value of worldwide production of the taxpayer for the taxable year over such value for the preceding taxable year.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF WORLDWIDE PRODUCTION.—The value of worldwide production for any taxable year shall be determined under section 199(g)(4).

''(B) MODIFIED VALUE.—The term 'modified value of worldwide production' means the value of worldwide production determined by not taking into account any item taken into account in determining the value of domestic production under section 199(g)(2).

''(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means any taxpayer—

''(1) which has domestic production gross receipts for the taxable year and the preceding taxable year, and

''(2) which is not treated at any time during the taxable year as an inverted domestic corporation under section 7874.

''(d) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 199 shall have the meaning given such term by section 199.

''(2) SPECIAL RULE FOR W–2 WAGES.—Notwithstanding paragraph (1), the amount of W–2 wages taken into account with respect to any employee for any taxable year shall not exceed $50,000.

''(e) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 2005.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', plus'', and by adding at the end the following:

''(31) the manufacturer's jobs credit determined under section 45S.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following:

''Sec. 45S. Manufacturer's jobs credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 314. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', or'', and by inserting at the end the following new paragraph:

''(14) qualified green building and sustainable design projects.''.

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

''(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(14), the term 'qualified green building and sustainable design project' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

''(2) DESIGNATIONS.—

''(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

''(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

''(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

''(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

''(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

''(iv) use at least 25 megawatts of fuel cell energy generation.

''(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

''(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

''(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

''(4) APPLICATION.—

''(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

''(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

''(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

''(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

''(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

''(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

''(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term 'resources' includes tax abatement benefits and contributions in kind.

''(iv) SIZE.—The project includes at least one of the following:

''(I) At least 1,000,000 square feet of building.

''(II) At least 20 acres.

''(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

''(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

''(II) Compliance with certification standards cited under clause (i).

''(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

''(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

''(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

''(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

''(i) the amount of electric consumption reduced as compared to conventional construction,

''(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

''(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

''(iv) the amount, in megawatts, of the project's fuel cell energy generation.

''(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RURAL STATE.—The term 'rural State' means any State which has—

''(i) a population of less than 4,500,000 according to the 2000 census,

''(ii) a population density of less than 150 people per square mile according to the 2000 census, and

''(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

''(B) LOCAL GOVERNMENT.—The term 'local government' has the meaning given such term by section 1393(a)(5).

''(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term 'net benefit of tax-exempt financing' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

''(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

''(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

''(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

''(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking ''or (13)'' and inserting ''(13), or (14)'', and

(2) by striking ''and qualified public educational facilities'' and inserting ''qualified public educational facilities, and qualified green building and sustainable design projects''.

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2004.

Subtitle B—Manufacturing Relating to Films

SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 180 the following new section:

''SEC. 181. TREATMENT OF QUALIFIED FILM AND TELEVISION PRODUCTIONS.

''(a) ELECTION TO TREAT CERTAIN COSTS OF QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EXPENSES.—

''(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

''(2) DOLLAR LIMITATION.—

''(A) IN GENERAL.—The aggregate cost which may be taken into account under paragraph (1) with respect to each qualified film or television production shall not exceed $15,000,000.

''(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

''(i) a low-income community under section 45D, or

''(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting '$20,000,000' for '$15,000,000'.

''(b) AMORTIZATION OF REMAINING COSTS.—

''(1) IN GENERAL.—If an election is made under subsection (a) with respect to any qualified film or television production, that portion of the basis of such production in excess of the amount taken into account under subsection (a) shall be allowed as a deduction ratably over the 36-month period beginning with the month in which such production is placed in service.

''(2) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION ALLOWABLE.—With respect to the basis of any qualified film or television production described in paragraph (1), no other depreciation or amortization deduction shall be allowable.

''(c) ELECTION.—

''(1) IN GENERAL.—An election under subsection (a) with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

''(2) REVOCATION OF ELECTION.—Any election made under subsection (a) may not be revoked without the consent of the Secretary.

''(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified film or television production' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

''(2) PRODUCTION.—

''(A) IN GENERAL.—A production is described in this paragraph if such production is property described in section 168(f)(3). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

''(B) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

''(3) QUALIFIED COMPENSATION.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified compensation' means compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel.

''(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term 'compensation' does not include participations and residuals (as defined in section 167(g)(7)(B)).

''(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

''(f) TERMINATION.—This section shall not apply to qualified film and television productions commencing after December 31, 2008.''.

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 180 the following new item:

''Sec. 181. Treatment of qualified film and television productions.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act.

SEC. 322. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

''(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

''(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

''(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term 'participations and residuals' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

''(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting 'for each taxable year in such period' for 'for such period'.

''(D) OTHER SPECIAL RULES.—

''(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

''(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

''(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the lookback method for the additional amounts allowable as a deduction solely by reason of this paragraph.''.

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

''(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

Subtitle C—Manufacturing Relating to Timber

SEC. 331. EXPENSING OF CERTAIN REFORESTATION EXPENDITURES.

(a) IN GENERAL.—So much of subsection (b) of section 194 (relating to amortization of reforestation expenditures) as precedes paragraph (2) is amended to read as follows:

''(b) TREATMENT AS EXPENSES.—

''(1) ELECTION TO TREAT CERTAIN REFORESTATION EXPENDITURES AS EXPENSES.—

''(A) IN GENERAL.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

''(B) DOLLAR LIMITATION.—The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''.

(b) NET AMORTIZABLE BASIS.—Section 194(c)(2) (defining amortizable basis) is amended by inserting ''which have not been taken into account under subsection (b)'' after ''expenditures''.

(c) CONFORMING AMENDMENTS.—

(1) Section 194(b) is amended by striking paragraphs (3) and (4).

(2) Section 194(b)(2) is amended by striking ''paragraph (1)'' both places it appears and inserting ''paragraph (1)(B)''.

(3) Section 194(c) is amended by striking paragraph (4) and inserting the following new paragraphs:

''(4) TREATMENT OF TRUSTS AND ESTATES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

''(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.

''(5) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.''.

(4) The heading for section 194 is amended by striking ''**AMORTIZATION**'' and inserting ''**TREATMENT**''.

(5) The item relating to section 194 in the table of sections for part VI of subchapter B of chapter 1 is amended by striking ''Amortization'' and inserting ''Treatment''.

(d) REPEAL OF REFORESTATION CREDIT.—

(1) IN GENERAL.—Section 46 (relating to amount of credit) is amended—

(A) by adding ''and'' at the end of paragraph (1),

(B) by striking '', and'' at the end of paragraph (2) and inserting a period, and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Section 48 is amended—

(i) by striking subsection (b),

(ii) by striking ''this subsection'' in paragraph (5) of subsection (a) and inserting ''subsection (a)'', and

(iii) by redesignating such paragraph (5) as subsection (b).

(B) The heading for section 48 is amended by striking ''**REFORESTATION CREDIT**''.

(C) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking '', reforestation credit''.

(D) Section 50(c)(3) is amended by striking ''or reforestation credit''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act.

SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.

Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking ''retains an economic interest in such timber'' and inserting ''either retains an economic interest in such timber or makes an outright sale of such timber''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking ''The date of disposal'' and inserting ''In the case of disposal of timber with a retained economic interest, the date of disposal''.

(2) The heading for section 631(b) is amended by striking ''WITH A RETAINED ECONOMIC INTEREST''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR TIMBER REITS.

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

''(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term 'prohibited transaction' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

''(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

''(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

''(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

''(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

''(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

''(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

''(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

''(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

''(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE IV—ADDITIONAL PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken

into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) DISCLOSURE BY SECRETARY.—

(1) IN GENERAL.—Section 6103 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) DISCLOSURE RELATING TO PAYMENTS OF CERTAIN PENALTIES.—Notwithstanding any other provision of this section, the Secretary shall make public the name of any person required to pay a penalty described in section 6707A(e)(2) and the amount of the penalty.''.

(2) RECORDS.—Section 6103(p)(3)(A) is amended by striking ''or (n)'' and inserting ''(n), or (q)''.

(c) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent'

with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained,

''(IV) has an arrangement with respect to the transaction which provides that contractual disputes between the taxpayer and the advisor are to be settled by arbitration or which limits damages by reference to fees paid to the advisor for such transaction, or

''(V) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts,

''(IV) is not signed by all individuals who are principal authors of the opinion, or

''(V) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit

or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, which is—

''(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

''(2) in violation of any requirement under regulations issued under section 320 of title 31, United States Code.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $10,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $100,000, or

''(II) 50 percent of the amount determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 413. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 415. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking ''a penalty'' and all that follows through the period in the first sentence of subsection (a) and inserting ''a penalty determined under subsection (b)'', and

(3) by inserting after subsection (a) the following new subsections:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

''(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

SEC. 419. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ''the tax liability or'' after ''respect to,'' in paragraph (1),

(2) by inserting ''aid, assistance, procurement, or advice with respect to such'' before ''portion'' both places it appears in paragraphs (2) and (3), and

(3) by inserting ''instance of aid, assistance, procurement, or advice or each such'' before ''document'' in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.''.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

''(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 420. STUDY ON INFORMATION SHARING AMONG LAW ENFORCEMENT AGENCIES.

(a) STUDY.—The Secretary of the Treasury shall, jointly with the Attorney General, the Securities and Exchange Commission, and the Commissioner of Internal Revenue, study the effectiveness of, and ways to improve, the sharing of information related to the promotion of prohibited tax shelters or tax avoidance schemes and other potential violations of Federal laws.

(b) REPORT.—The Secretary shall, not later than 1 year after the date of the enactment of this Act, report to the appropriate committees of the Congress the results of the study under subsection (a), including any recommendations for legislation.

Subtitle B—Other Corporate Governance Provisions

SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to the Federal annual tax return of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

''(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(C) by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

Subtitle C—Enron-Related Tax Shelter Provisions

SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by

treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after December 31, 2003.

SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking ''and any regular interest in a FASIT,'', and

(B) by striking ''or FASIT'' each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking ''or a FASIT''.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related

party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

Subtitle D—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

''(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of

tax of an acquired entity to which subsection (b) applies—

''(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

''(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

(e) DISCLOSURE OF CORPORATE EXPATRIATION TRANSACTIONS.—

(1) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) PROXY SOLICITATIONS IN CONNECTION WITH CORPORATE EXPATRIATION TRANSACTIONS.—

''(1) DISCLOSURE TO SHAREHOLDERS OF EFFECTS OF CORPORATE EXPATRIATION TRANSACTION.—The Commission shall, by rule, require that each domestic issuer shall prominently disclose, not later than 5 business days before any shareholder vote relating to a corporate expatriation transaction, as a separate and distinct document accompanying each proxy statement relating to the transaction—

''(A) the number of employees of the domestic issuer that would be located in the new foreign jurisdiction of incorporation or organization of that issuer upon completion of the corporate expatriation transaction;

''(B) how the rights of holders of the securities of the domestic issuer would be impacted by a completed corporate expatriation transaction, and any differences in such rights before and after a completed corporate expatriation transaction; and

''(C) that, as a result of a completed corporate expatriation transaction, any taxable holder of the securities of the domestic issuer shall be subject to the taxation of any capital gains realized with respect to such securities, and the amount of any such capital gains tax that would apply as a result of the transaction.

''(2) DEFINITIONS.—In this subsection, the following definitions shall apply:

''(A) CORPORATE EXPATRIATION TRANSACTION.—The term 'corporate expatriation transaction' means any transaction, or series of related transactions, described in subsection (a) or (b) of section 7874 of the Internal Revenue Code of 1986.

''(A) DOMESTIC ISSUER.—The term 'domestic issuer' means an issuer created or organized in the United States or under the law of the United States or of any State.''

(2) EFFECTIVE DATE.—Section 14(i) of the Securities Exchange Act of 1934 (as added by this subsection) shall apply with respect to corporate expatriation transactions (as defined in that section 14(i)) proposed on and after the date of enactment of this Act.

SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

''SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2003' for

'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

''(e) DEFINITIONS.—For purposes of this section—

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after January 1, 2004.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after January 1, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after January 1, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

''CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

''Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

''SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the inversion date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting 'July 10, 2002' for 'March 20, 2002') with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

''(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) INVERTED CORPORATION; INVERSION DATE.—

''(A) INVERTED CORPORATION.—The term 'inverted corporation' means any corporation to which subsection (a) or (b) of section 7874 applies determined—

''(i) by substituting 'July 10, 2002' for 'March 20, 2002' in section 7874(a)(2)(A), and

''(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

''(B) INVERSION DATE.—The term 'inversion date' means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''48,'' after ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A''.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

''Chapter 48. Stock compensation of insiders in inverted corporations.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

Subtitle E—International Tax

SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

''(A) obligations of the United States, money, or deposits with persons described in paragraph (4);''.

(b) ELIGIBLE PERSONS.—Section 956(c) (relating to exceptions to definition of United States property) is amended by adding at the end the following new paragraph:

''(4) FINANCIAL SERVICES PROVIDERS.—

''(A) IN GENERAL.—For purposes of paragraph (2)(A), a person is described in this paragraph if at least 80 percent of the person's income is income described in section 904(d)(2)(C)(ii) (and the regulations thereunder) which is derived from persons who are not related persons.

''(B) SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) all related persons shall be treated as 1 person in applying the 80-percent test, and

''(ii) there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of a person as a person described in this paragraph.

''(C) RELATED PERSON.—For purposes of this paragraph, the term 'related person' has the meaning given such term by section 954(d)(3).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

''(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

''(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

''(A) subsection (a) and section 331 shall not apply to such distribution, and

''(B) such distribution shall be treated as a distribution to which section 301 applies.

''(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable holding company' means any domestic corporation—

''(i) which is a common parent of an affiliated group,

''(ii) stock of which is directly owned by the distributee foreign corporation,

''(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

''(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

''(B) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) 0f section 1504(b)).

''(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

''(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a

deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount (reduced by properly allowable deductions and qualified deficits under section 952(c)(1)(B)) is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item (reduced by properly allowable deductions and qualified deficits under section 952(c)(1)(B)) is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

''Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amending by adding at the end the following new subparagraph:

''(D) APPLICATION TO CERTAIN DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATION.—

''(i) IN GENERAL.—This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

''(ii) APPLICABLE DISPOSITION.—For purposes of clause (i), the term 'applicable disposition' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

''(iii) EXCEPTION.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

''(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

''(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

Clause (i) shall apply to any gain recognized on any disposition to which this clause applies.

''(iv) CONTROLLED FOREIGN CORPORATION.—For purposes of this subparagraph, the term 'controlled foreign corporation' has the meaning given such term by section 957.

''(v) STOCK OWNERSHIP.—For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

''(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

''(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

''(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

''(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

''(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

''(C) DEALER.—For purposes of subparagraph (A), the term 'dealer' means—

''(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

''(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

''(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

''(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

"For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE C CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(A) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(B) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall

be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 464. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''.

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

''(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'personal property' includes—

''(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

''(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

''(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.''.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) MODIFICATIONS OF QUALIFIED COVERED CALL EXCEPTION.—

(1) MARKETS ON WHICH OPTIONS MAY BE TRADED.—

(A) IN GENERAL.—Section 1092(c)(4)(B)(i) is amended by striking ''or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph''.

(B) REGULATIONS.—Section 1092(c)(4)(H) is amended by adding at the end the following new sentence: ''Such regulations shall not add any exchange or market not described in subparagraph (B)(i) to the exchanges or markets on which qualified covered call options may be traded.''

(2) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: '', other than a qualified covered call option to which section 1092(f) applies'' before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART II—CORPORATIONS AND PARTNERSHIPS

SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'''(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'''(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'''(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''**OPTIONAL**'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''**OPTIONAL**'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 755(c), as added by this Act, is amended by striking ''section 734(b)'' and inserting ''section 734(a)''.

(4) Section 761(e)(2) is amended by striking ''optional''.

(5) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(7) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART III—DEPRECIATION AND AMORTIZATION

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) of the Internal Revenue Code of 1986 (relating to limitations) is amended by adding at the end the following new paragraph:

''(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

''(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

''(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle—

''(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

''(II) which is not subject to section 280F, and

''(III) which is rated at not more than 14,000 pounds gross vehicle weight.

''(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

''(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

''(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

''(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPERATIONS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

''(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

''(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

''(II) which is with respect to the property subject to the lease or substantially similar property, and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

''SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE PROPERTY.

''(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

''(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

''(A) the sum of—

''(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

''(ii) the aggregate deductions for interest properly allocable to such property, exceed

''(B) the aggregate income from such property.

''(2) TAX-EXEMPT USE PROPERTY.—The term 'tax-exempt use property' has the meaning given to such term by section 168(h) (without regard to paragraph (1)(C) or (3) thereof and determined as if property described in section 167(f)(1)(B) were tangible property). Such term shall not include property with respect to which the credit under section 42 is allowed and which, but for this sentence, would be tax-exempt property solely by reason of section 168(h)(6).

''(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

''(1) PROPERTY NOT FINANCED WITH TAX-EXEMPT BONDS OR FEDERAL FUNDS.—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from—

''(A) the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding bond of which) is outstanding when the lease is entered into, or

''(B) Federal funds.

The Secretary may by regulations provide for a de minimis exception from this paragraph.

''(2) AVAILABILITY OF FUNDS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

''(i) subject to any arrangement referred to in subparagraph (B), or

''(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or a lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. Funds shall be treated as described in clause (ii) only if a reasonable person would conclude, based on the facts and circumstances, that such funds are so described.

''(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph are—

''(i) a defeasance arrangement, a loan by the lessee to the lessor or a lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not such arrangement provides credit support), and

''(ii) any other arrangement identified by the Secretary in regulations.

''(C) ALLOWABLE AMOUNT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

''(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the creditworthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

''(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

''(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero in the case of any arrangement which involves—

''(I) a loan from the lessee to the lessor or a lender,

''(II) any deposit, letter of credit, or payment undertaking agreement involving a lender, or

''(III) any credit support made available to the lessor in which a lender (if any) does not have a claim which is senior to the lessor.

For purposes of subclause (I), the term 'loan' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

''(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—A lease of property meets the requirements of this paragraph if—

''(A) the lessor—

''(i) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

''(ii) maintains such investment throughout the term of the lease, and

''(B) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

Subparagraphs (A)(ii) and (B) shall not apply if the lease term is described in section 168(h)(1)(C)(ii), or in the case of qualified technological equipment, is described in section 168(h)(3). For purposes of subparagraph (B), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

''(4) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

''(B) CERTAIN ARRANGEMENTS FAIL REQUIREMENT.—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

''(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

''(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

''(5) PROPERTY WITH MORE THAN 7-YEAR CLASS LIFE.—In the case of a lease—

''(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, and

''(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

''(6) REGULATORY REQUIREMENTS.—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

''(e) SPECIAL RULES.—

''(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

''(A) IN GENERAL.—In the case of any former tax-exempt use property—

''(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

''(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allowable under subsection (b) with respect to such property in the next taxable year.

''(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term 'former tax-exempt use property' means any property which—

''(i) is not tax-exempt use property for the taxable year, but

''(ii) was tax-exempt use property for any prior taxable year.

''(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer

disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

''(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469.

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' include any related party (within the meaning of section 197(f)(9)(C)(i)).

''(2) LEASE TERM.—The term 'lease term' has the meaning given to such term by section 168(i)(3).

''(3) LENDER.—The term 'lender' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

''(4) LOAN.—The term 'loan' includes any similar arrangement.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulation which—

''(1) allow in appropriate cases the aggregation of property subject to the same lease, and

''(2) provide for the determination of the allocation of interest expense for purposes of this section.''

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

''Sec. 470. Limitations on losses from tax-exempt use property.'

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to leases entered into after November 18, 2003.

(2) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this section shall apply to taxable years beginning after January 31, 2004, with respect to leases entered into on or before November 18, 2003.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 482. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement to which any initiative described in paragraph (2) applied, or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (2), shall be made without regard to section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term ''applicable taxpayer'' means a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A).

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 1, 2005'' and inserting ''September 30, 2013''.

SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this

Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

''SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

''(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

''(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

''(A) to locate and contact any taxpayer specified by the Secretary,

''(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

''(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

''(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

''(3) prohibits subcontractors from—

''(A) having contacts with taxpayers,

''(B) providing quality assurance services, and

''(C) composing debt collection notices, and

''(4) permits subcontractors to perform other services only with the approval of the Secretary.

''(c) FEES AND EXPENSES.—The Secretary may retain and use—

''(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

''(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

''(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

''(f) APPLICATION OF SECTION.—In no event may the term of any qualified tax collection contract extend beyond the date which is 5 years after the date of the enactment of this section.

''(g) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

''Sec. 6306. Qualified Tax Collection Contracts.''.

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

''SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

''(b) MODIFICATIONS.—For purposes of subsection (a)—

''(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) BIENNIAL REPORT.—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

(1) a complete cost benefit analysis,

(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,

(3) the amounts collected and the collection costs incurred (directly and indirectly),

(4) an evaluation of contractor performance,

(5) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and

(6) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service's own collection techniques) and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

(f) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 488. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking ''The Secretary'' and inserting ''(a) IN GENERAL.—The Secretary'',

(2) by striking ''and'' at the end of paragraph (1) and inserting ''or'',

(3) by striking ''(other than interest)'', and

(4) by adding at the end the following new subsections:

''(b) AWARDS TO WHISTLEBLOWERS.—

''(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

''(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

''(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

''(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

''(3) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1) or (2) shall be subject to the filing by

the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such review shall be subject to the rules under section 7461(b)(1).

''(4) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

''(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds $200,000 for any taxable year subject to such action, and

''(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

''(5) ADDITIONAL RULES.—

''(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

''(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

''(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

''(c) WHISTLEBLOWER OFFICE.—

''(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Whistleblower Office' which—

''(A) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

''(B) shall monitor any action taken with respect to such matter,

''(C) shall inform such individual that it has accepted the individual's information for further review,

''(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

''(E) may ask for additional assistance from such individual or any legal representative of such individual, and

''(F) shall determine the amount to be awarded to such individual under subsection (b).

''(2) FUNDING FOR OFFICE.—From the amounts available for expenditure under subsection (a), the Whistleblower Office shall be credited with an amount equal to the awards made under subsection (b). These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

''(3) REQUEST FOR ASSISTANCE.—

''(A) IN GENERAL.—Any assistance requested under paragraph (1)(E) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such disclosure subject to section 6103(n).

''(B) FUNDING OF ASSISTANCE.—From the funds made available to the Whistleblower Office under paragraph (2), the Whistleblower Office may reimburse the costs incurred by any legal representative in providing assistance described in subparagraph (A).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to information provided on or after the date of the enactment of this Act.

SEC. 489. PROTECTION OF OVERTIME PAY.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k)(1) The Secretary shall not promulgate any rule under subsection (a)(1) that exempts from the overtime pay provisions of section 7 any employee who earns less than $23,660 per year.

''(2) The Secretary shall not promulgate any rule under subsection (a)(1) concerning the right to overtime pay that is not as protective, or more protective, of the overtime pay rights of employees in the occupations or job classifications described in paragraph (3) as the protections provided for such employees under the regulations in effect under such subsection on March 31, 2003.

''(3) The occupations or job classifications described in this paragraph are as follows:

''(A) Any worker paid on an hourly basis.

''(B) Blue collar workers.

''(C) Any worker provided overtime under a collective bargaining agreement.

''(D) Team leaders.

''(E) Computer programmers.

''(F) Registered nurses.

''(G) Licensed practical nurses.

''(H) Nurse midwives.

''(I) Nursery school teachers.

''(J) Oil and gas pipeline workers.

''(K) Oil and gas field workers.

''(L) Oil and gas platform workers.

''(M) Refinery workers.

''(N) Steel workers.

''(O) Shipyard and ship scrapping workers.

''(P) Teachers.

''(Q) Technicians.

''(R) Journalists.

''(S) Chefs.

''(T) Cooks.

''(U) Police officers.

''(V) Firefighters.

''(W) Fire sergeants.

''(X) Police sergeants.

''(Y) Emergency medical technicians.

''(Z) Paramedics.

''(AA) Waste disposal workers.

''(BB) Day care workers.

''(CC) Maintenance employees.

''(DD) Production line employees.

''(EE) Construction employees.

''(FF) Carpenters.

''(GG) Mechanics.

''(HH) Plumbers.

''(II) Iron workers.

''(JJ) Craftsmen.

''(KK) Operating engineers.

''(LL) Laborers.

''(MM) Painters.

''(NN) Cement masons.

''(OO) Stone and brick masons.

''(PP) Sheet metal workers.

''(QQ) Utility workers.

''(RR) Longshoremen.

''(SS) Stationary engineers.

''(TT) Welders.

''(UU) Boilermakers.

''(VV) Funeral directors.

''(WW) Athletic trainers.

''(XX) Outside sales employees.

''(YY) Inside sales employees.

''(ZZ) Grocery store managers.

''(AAA) Financial services industry workers.

''(BBB) Route drivers.

''(CCC) Assistant retail managers.

''(4) Any portion of a rule promulgated under subsection (a)(1) after March 31, 2003, that modifies the overtime pay provisions of section 7 in a manner that is inconsistent with paragraphs (2) and (3) shall have no force or effect as it relates to the occupation or job classification involved.''.

SEC. 490. PROTECTION OF OVERTIME PAY.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003 remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall remain in effect. Notwithstanding the preceding sentence, the increased salary requirements provided for in such final rule at section 541.600 of such title 29, shall remain in effect.''.

PART V—MISCELLANEOUS PROVISIONS

SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS INCREASED.—Section 501(c)(15)(A)(i)(II) is amended by striking ''50 percent'' and inserting ''60 percent''.

(b) LIMITATION ON NET WRITTEN PREMIUMS INCREASED.—Section 831(b)(2) (relating to companies to which this subsection applies) is amended—

(1) by striking ''$1,200,000'' and inserting ''$1,890,000'', and

(2) by adding at the end the following new subparagraph:

''(C) INFLATION ADJUSTMENTS.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, the dollar amount in subparagraph (A)(i) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—If the amount in subparagraph (A)(i) as increased under clause (i) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends (or, if later, December 31, 2004) or December 31, 2007.

SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,''.

(b) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Section 170(e) is amended by adding at the end the following new paragraph:

''(7) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—

''(A) IN GENERAL.—In the case of a charitable contribution of any property described in paragraph (1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in paragraph (1)(B)(ii)), if—

''(i) the lesser of—

''(I) 5 percent of the fair market value of such property (determined at the time of such contribution), or

''(II) $1,000,000, exceeds

''(ii) the amount of such contribution as determined under paragraph (1),

then the amount of the charitable contribution of such property otherwise taken into account under this section shall equal the amount determined under clause (i).''.

(c) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

''(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

''(2) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term 'qualified donee income' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

''(3) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

''(4) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

''(5) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

''(6) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

"Taxable Year of Donor Ending On or After Date of Contribution:	Applicable Percentage:
1st or 2d	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th or 12th	10.

''(7) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term 'qualified intellectual property contribution' means any charitable contribution of qualified intellectual property—

''(A) the amount of which taken into account under this section—

''(i) is reduced by reason of subsection (e)(1), or

''(ii) determined under subsection (e)(7), and

''(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

''(8) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term 'qualified intellectual property' means property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

''(9) OTHER SPECIAL RULES.—

''(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subparagraph (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

''(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (2) shall not exceed the amount of such income reported under section 6050L(b)(1).

''(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

''(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

''(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

''(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.''.

(d) REPORTING REQUIREMENTS.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

"SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

''(a) DISPOSITIONS OF DONATED PROPERTY.—

''(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the property,

''(C) the date of the contribution,

''(D) the amount received on the disposition, and

''(E) the date of such disposition.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

''(B) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

''(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the qualified intellectual property contributed,

''(C) the date of the contribution, and

''(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (9)(B) of section 170(m) and with the modifications described in paragraphs (4) and (5) of such section).

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

''(B) SPECIFIED TAXABLE YEAR.—The term 'specified taxable year' means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

''(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.''.

(e) PROCESSING FEE.—Section 170, as amended by subsection (b), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) PROCESSING FEE.—In the case of a deduction allowed for any taxable year under this section with respect to a charitable contribution

of any property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)), the taxpayer shall include, with the taxpayer's return of tax including such deduction, a fee equal to 1 percent of the amount of such deduction. Such fee shall be credited by the Secretary to the operations of the Exempt Organizations unit within the Internal Revenue Service.''.

(f) MODIFICATION OF SUBSTANTIAL VALUATIONS MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBUTIONS OF PROPERTY.—

(1) SUBSTANTIAL MISSTATEMENTS.—Section 6662(e)(1)(A) (relating to substantial valuation misstatements under chapter 1) is amended by inserting ''(50 percent or more in the case of a charitable contribution of any property described in section 170(e)(1)(B)(iii))'' after ''200 percent or more''.

(2) GROSS MISSTATEMENTS.—Section 6662(h)(2)(A) (defining gross valuation misstatements) is amended by striking clause (ii) and inserting the following new clauses:

''(ii) '100 percent or more' for '50 percent or more',

''(iii) '25 percent or less' for '50 percent or less', and''.

(g) ANTI-ABUSE RULES.—The Secretary of the Treasury—

(1) may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of paragraphs (1)(B)(iii) and (7) of section 170(e) of the Internal Revenue Code of 1986 (as added by subsections (a) and (b)), including preventing—

(A) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(B) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(C) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply, and

(2) shall prescribe guidance on appraisal standards for contributions of property described in section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by this section).

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

SEC. 495. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 496. HOLDING PERIOD FOR PREFERRED STOCK.

(a) IN GENERAL.—Section 1(h)(11)(B)(iii)(I) is amended to read as follows:

''(I) with respect to which the holding period requirements of section 246(c) are not met, determined by substituting '60 days' for '45' days each place it appears, by substituting '120-day' for '90-day' each place it appears, and by substituting '120 days' for '90 days' and '240-day' for '180-day' in paragraph (2).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 497. SUBSTANTIAL PRESENCE TEST REQUIRED TO DETERMINE BONA FIDE RESIDENCE IN UNITED STATES POSSESSIONS.

(a) SUBSTANTIAL PRESENCE TEST.—

(1) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 (relating to possessions of the United States) is amended by adding at the end the following new section:

''SEC. 937. BONA FIDE RESIDENT.

''For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), the term 'bona fide resident' means a person who satisfies a test, determined by the Secretary, similar to the substantial presence test under section 7701(b)(3) with respect to Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be.''.

(2) CONFORMING AMENDMENTS.—

(A) The following provisions are amended by striking ''during the entire taxable year'' and inserting ''for the taxable year'':

(i) Paragraph (3) of section 865(g).

(ii) Subsection (a) of section 876(a).

(iii) Paragraphs (2) and (3) of section 901(b).

(iv) Subsection (a) of section 931.

(v) Paragraphs (1) and (2) of section 933.

(B) Section 931(d) is amended by striking paragraph (3).

(C) Section 932 is amended by striking ''at the close of the taxable year'' and inserting ''for the taxable year'' each place it appears.

(3) CLERICAL AMENDMENT.—The table of sections of subpart D of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 937. Bona fide resident.''.

(b) REPORTING REQUIREMENTS FOR BONA FIDE RESIDENTS OF THE VIRGIN ISLANDS.—Paragraph (2) of section 932(c) (relating to treatment of Virgin Islands residents) is amended to read as follows:

''(2) FILING REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding paragraph (4), each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with—

''(i) the Virgin Islands, and

''(ii) the United States.

''(B) FILING FEE.—The Secretary shall charge a processing fee with respect to the return filed under subparagraph (A)(ii) of an amount appropriate to cover the administrative costs of the requirements of subparagraph (A)(ii) and the enforcement of the purposes of subparagraph (A)(ii).''.

(c) PENALTIES.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by adding at the end the following new section:

''SEC. 6717. FAILURE OF VIRGIN ISLANDS RESIDENTS TO FILE RETURNS WITH THE UNITED STATES.

''(a) PENALTY AUTHORIZED.—The Secretary may impose a civil money penalty on any person who violates, or causes any violation of, the requirements of section 932(c)(2)(A)(ii).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in subsection (c), the amount of any civil penalty imposed under subsection (a) shall not exceed $5,000.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any violation if such violation was due to reasonable cause and the taxpayer acted in good faith.

''(c) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any requirement of section 932(c)(2)(A)(ii)—

''(1) the maximum penalty under subsection (b)(1) shall be increased to $25,000 and

''(2) subsection (b)(2) shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for Part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6717. Failure of Virgin Islands residents to file returns with the United States.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

TITLE V—PROTECTION OF UNITED STATES WORKERS FROM COMPETITION OF FOREIGN WORKFORCES

SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS.

(a) LIMITATIONS.—

(1) IN GENERAL.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

''SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF CONTRACTS.

''(a) CONVERSIONS TO CONTRACTOR PERFORMANCE OF FEDERAL ACTIVITIES.—An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A–76 may not be performed by the contractor or any subcontractor at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States.

''(b) OTHER FEDERAL CONTRACTS.—(1) A contract that is entered into by the head of an executive agency may not be performed outside the United States except to meet a requirement of the executive agency for the contract to be performed specifically at a location outside the United States.

''(2) The prohibition in paragraph (1) does not apply in the case of a contract of an executive agency if—

''(A) the President determines in writing that it is necessary in the national security interests of the United States for the contract to be performed outside the United States; or

''(B) the head of such executive agency makes a determination and reports such determination on a timely basis to the Director of the Office of Management and Budget that—

''(i) the property or services needed by the executive agency are available only by means of performance of the contract outside the United States; and

''(ii) no property or services available by means of performance of the contract inside the United States would satisfy the executive agency's need.

''(3) Paragraph (1) does not apply to the performance of a contract outside the United States under the exception provided in subsection (a).

''(c) STATE CONTRACTS.—(1) Except as provided in paragraph (2), funds appropriated for financial assistance for a State may not be disbursed to or for such State during a fiscal year unless the chief executive of that State has transmitted to the Administrator for Federal Procurement Policy, not later than April 1 of the preceding fiscal year, a written certification that none of such funds will be expended for the performance outside the United States of contracts entered into by such State.

''(2) The prohibition on disbursement of funds to or for a State under paragraph (1) does not apply with respect to the performance of a State contract outside the United States if—

''(A) the chief executive of such State—

''(i) determines that the property or services needed by the State are available only by means of performance of the contract outside the United States and no property or services available by means of performance of the contract inside the United States would satisfy the State's need; and

''(ii) transmits a notification of such determination to the head of the executive agency of the United States that administers the authority under which such funds are disbursed to or for the State; and

''(B) the head of the executive agency receiving the notification of such determination—

''(i) confirms that the facts warrant the determination;

''(ii) approves the determination; and

''(iii) transmits a notification of the approval of the determination to the Director of the Office of Management and Budget.

''(3) In this subsection, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

''(d) Subsections (b) and (c) shall not apply to procurement covered by the World Trade Organization Government Procurement Agreement.

''(e) NATIONAL SECURITY EXEMPTION.—Subsection (b) shall not apply to any procurement for national security purposes entered into by—

''(1) the Department of Defense or any agency or entity thereof;

''(2) the Department of the Army, the Department of the Navy, the Department of the Air Force, or any agency or entity of any of the military departments;

''(3) the Department of Homeland Security;

''(4) the Department of Energy or any agency or entity thereof, with respect to the national security programs of that Department; or

''(5) any element of the intelligence community.

''(f) RESPONSIBILITIES OF OMB.—The Director of the Office of Management and Budget shall—

''(1) maintain—

''(A) the waivers granted under subsection (b)(2), together with the determinations and certifications on which such waivers were based; and

''(B) the notifications received under subsection (c)(2)(B)(iii); and

''(2) submit to Congress promptly after the end of each quarter of each fiscal year a report that sets forth—

''(A) the waivers that were granted under subsection (b)(2) during such quarter; and

''(B) the notifications that were received under subsection (c)(2)(B)(iii) during such quarter.

''(g) ANNUAL GAO REVIEW.—The Comptroller General shall—

''(1) review, each fiscal year, the waivers granted during such fiscal year under subsection (b)(2) and the disbursements of funds authorized pursuant to the exceptions in subsections (c)(2) and (e); and

''(2) promptly after the end of such fiscal year, transmit to Congress a report containing a list of the contracts covered by such waivers and exception together with a brief description of the performance of each such contract to the maximum extent feasible outside the United States.''.

(2) CLERICAL AMENDMENT.—The table of sections in section 1(b) of such Act is amended by adding at the end the following new item:

''Sec. 42. Limitations on off-shore performance of contracts.''.

(b) INAPPLICABILITY TO STATES DURING FIRST TWO FISCAL YEARS.—Section 42(c) of the Office of Federal Procurement Policy Act (as added by subsection (a)) shall not apply to disbursements of funds to a State during the fiscal year in which this Act is enacted and the next fiscal year.

SEC. 502. REPEAL OF SUPERSEDED LAW.

Section 647 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended by striking subsection (e).

SEC. 503. EFFECTIVE DATE AND APPLICABILITY.

(a) IN GENERAL.—This title and the amendments made by this title shall take effect 30 days after the Secretary of Commerce certifies that the amendments made by this title will not result in the loss of more jobs than it will protect and will not cause harm to the United States economy. The initial certification shall be made by the Secretary of Commerce no later than 90 days after the enactment of this Act. Such certification must be renewed on or before January 1 of each year in order for the amendments made by this title to be in effect for that year.

(b) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—The provisions of this title shall not apply to the extent that they may be inconsistent with obligations under international agreements. Within 90 days of this legislation, the Office of Management and Budget, in consultation with the Office of the United States Trade Representative, shall develop guidelines for the implementation of this provision.

TITLE VI—OTHER PROVISIONS

Subtitle A—Provisions Relating to Housing

SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.

(a) YEAR HOLIDAY.—Section 143(a)(2)(A)(iv) of the Internal Revenue Code of 1986 shall not apply to amounts received during the 1-year period beginning on the date of the enactment of this Act with respect to any bond outstanding on such date.

(b) REPEAL OF REQUIRED USE OF CERTAIN PRINCIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND FINANCINGS TO REDEEM BONDS.—

(1) IN GENERAL.—Subparagraph (A) of section 143(a)(2) (defining qualified mortgage issue) is amended by adding ''and'' at the end of clause (ii), by striking '', and'' at the end of clause (iii) and inserting a period, and by striking clause (iv) and the last sentence.

(2) CONFORMING AMENDMENT.—Clause (ii) of section 143(a)(2)(D) is amended by striking ''(and clause (iv) of subparagraph (A))''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to bonds originally issued after the date of the enactment of this Act.

SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.

(a) IN GENERAL.—Paragraph (3) of section 163(h) (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

''(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

''(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.

''(ii) PHASEOUT.—The amount otherwise allowable as a deduction under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).''.

(b) DEFINITION AND SPECIAL RULES.—Paragraph (4) of section 163(h) (relating to other definitions and special rules) is amended by adding at the end the following new subparagraphs:

''(E) QUALIFIED MORTGAGE INSURANCE.—The term 'qualified mortgage insurance' means—

''(i) the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

''(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Administration.''.

(c) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6050H (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

''(h) RETURNS RELATING TO MORTGAGE INSURANCE PREMIUMS.—

''(1) IN GENERAL.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

''(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

''(3) SPECIAL RULES.—For purposes of this subsection—

''(A) rules similar to the rules of subsection (c) shall apply, and

''(B) the term 'mortgage insurance' means—

''(i) the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration or the Rural Housing Administration, and

''(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued in taxable years beginning after December 31, 2004, and ending before January 1, 2006.

SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

''(e) SPECIAL RULE REGARDING CERTAIN HISTORIC STRUCTURES.—In the case of any qualified rehabilitation expenditure with respect to any certified historic structure—

''(1) which is placed in service after the date of the enactment of this subsection,

''(2) which is part of a qualified low-income building with respect to which a credit under section 42 is allowed, and

''(3) substantially all of the residential rental units of which are used for tenants who have attained the age of 65,

subsection (a)(2) shall be applied by substituting '25 percent' for '20 percent'.''.

(b) APPLICATION OF MACRS.—The Internal Revenue Code of 1986 shall be applied and administered as if paragraph (4)(X) of section 251(d) of the Tax Reform Act of 1986 as applied to the amendments made by section 201 of such Act had not been enacted with respect to any property described in such paragraph and placed in service after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

Subtitle B—Provisions Relating to Bonds

SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX BENEFITS.

(a) ADDITIONAL EXTENSION OF TAX-EXEMPT BOND FINANCING.—Section 1400L(d)(2)(D), as amended by this Act, is amended by striking ''2006'' and inserting ''2010''.

(b) EXTENSION OF ADVANCE REFUNDINGS.—Section 1400L(e)(1) is amended by striking ''2005'' and inserting ''2006''.

SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED ZONE ACADEMY BONDS.

(a) PROCEEDS OF BONDS MAY BE USED FOR CONSTRUCTION AND LAND ACQUISITION.—Paragraph (5) of section 1397E(d) (defining qualified purpose) is amended—

(1) by striking ''rehabilitating or repairing'' in subparagraph (A) and inserting ''constructing, rehabilitating, or repairing'', and

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following:

''(B) acquiring the land on which the facility is to be constructed,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2003.

SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Paragraph (1) of section 7871(c) (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

''(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

''(A) such obligation—

''(i) is part of an issue 95 percent or more of the net proceeds of which are to be used to finance any facility located on an Indian reservation, and

''(ii) is issued before January 1, 2006, or

''(B) such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.''.

(b) SPECIAL RULES AND DEFINITIONS.—Subsection (c) of section 7871 is amended by inserting at the end the following new paragraph:

''(4) SPECIAL RULES AND DEFINITIONS.—

''(A) EXCLUSION OF GAMING.—An obligation described in subparagraph (A) or (B) of paragraph (1) may not be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

''(B) INDIAN RESERVATION.—For purposes of paragraph (1), the term 'Indian reservation' means—

''(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

''(ii) lands held under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 614. DEFINITION OF MANUFACTURING FACILITY FOR SMALL ISSUE BONDS.

(a) IN GENERAL.—Section 144(a)(12) (relating to termination dates) is amended by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term 'manufacturing facility' means any facility which is used in—

''(i) the manufacture of tangible personal property (including processing which results in a change in the condition of such property),

''(ii) the manufacture or development of any software product or process if—

''(I) it takes more than 6 months to manufacture or develop such product,

''(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months, and

''(III) the software product or process comprises programs, routines, and attendant documentation developed and maintained for use in computer and telecommunications technology, or

''(iii) the manufacture or development of any biobased product or bioenergy if—

''(I) it takes more than 6 months to manufacture or develop, and

''(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months.

''(D) RELATED FACILITIES.—For purposes of subparagraph (C), the term 'manufacturing facility' includes a facility which is directly and functionally related to a manufacturing facility (determined without regard to subparagraph (C)) if—

''(i) such facility, including an office facility and a research and development facility, is located on the same site as the manufacturing facility, and

''(ii) not more than 40 percent of the net proceeds of the issue are used to provide such facility.

''(E) OTHER DEFINITIONS.—For purposes of subparagraph (C)(iii)—

''(i) BIOBASED PRODUCT.—The term 'biobased product' means a commercial or industrial product (other than food or feed) which utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

''(ii) BIOENERGY.—The term 'bioenergy' means biomass used in the production of energy, including liquid, solid, or gaseous fuels, electricity, and heat.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 615. CONSERVATION BONDS.

(a) TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any qualified forest conservation bond shall be treated as an exempt facility bond under section 142 of such Code.

(2) QUALIFIED FOREST CONSERVATION BOND.—For purposes of this section, the term ''qualified forest conservation bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3) of such Code) of such issue are to be used for qualified project costs,

(B) such bond is issued for a qualified organization, and

(C) such bond is issued before December 31, 2006.

(3) LIMITATION ON AGGREGATE AMOUNT ISSUED.—

(A) IN GENERAL.—The maximum aggregate face amount of bonds which may be issued under this subsection shall not exceed $1,500,000,000 for all projects (excluding refunding bonds).

(B) ALLOCATION OF LIMITATION.—The limitation described in subparagraph (A) shall be allocated by the Secretary of the Treasury among qualified organizations based on criteria established by the Secretary not later than 180 days after the date of the enactment of this section, after consultation with the Chief of the Forest Service.

(4) QUALIFIED PROJECT COSTS.—For purposes of this subsection, the term ''qualified project costs'' means the sum of—

(A) the cost of acquisition by the qualified organization from an unrelated person of forests and forest land which at the time of acquisition or immediately thereafter are subject to a conservation restriction described in subsection (c)(2),

(B) capitalized interest on the qualified forest conservation bonds for the 3-year period beginning on the date of issuance of such bonds, and

(C) credit enhancement fees which constitute qualified guarantee fees (within the meaning of section 148 of such Code).

(5) SPECIAL RULES.—In applying the Internal Revenue Code of 1986 to any qualified forest conservation bond, the following modifications shall apply:

(A) Section 146 of such Code (relating to volume cap) shall not apply.

(B) For purposes of section 147(b) of such Code (relating to maturity may not exceed 120 percent of economic life), the land and standing timber acquired with proceeds of qualified forest conservation bonds shall have an economic life of 35 years.

(C) Subsections (c) and (d) of section 147 of such Code (relating to limitations on acquisition of land and existing property) shall not apply.

(D) Section 57(a)(5) of such Code (relating to tax-exempt interest) shall not apply to interest on qualified forest conservation bonds.

(6) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (2)(C) and (3) shall not apply to any bond (or series of bonds) issued to refund a qualified forest conservation bond issued before December 31, 2006, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of such Code.

(7) EFFECTIVE DATE.—This subsection shall apply to obligations issued on or after the date which is 180 days after the enactment of this Act.

(b) ITEMS FROM QUALIFIED HARVESTING ACTIVITIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Income, gains, deductions, losses, or credits from a qualified harvesting activity conducted by a qualified organization shall not be subject to tax or taken into account under subtitle A of the Internal Revenue Code of 1986.

(2) LIMITATION.—The amount of income excluded from gross income under paragraph (1) for any taxable year shall not exceed the amount used by the qualified organization to make debt service payments during such taxable year for qualified forest conservation bonds.

(3) QUALIFIED HARVESTING ACTIVITY.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term ''qualified harvesting activity'' means the sale, lease, or harvesting, of standing timber—

(i) on land owned by a qualified organization which was acquired with proceeds of qualified forest conservation bonds,

(ii) with respect to which a written acknowledgement has been obtained by the qualified organization from the State or local governments with jurisdiction over such land that the acquisition lessens the burdens of such government with respect to such land, and

(iii) pursuant to a qualified conservation plan adopted by the qualified organization.

(B) EXCEPTIONS.—

(i) CESSATION AS QUALIFIED ORGANIZATION.—The term ''qualified harvesting activity'' shall not include any sale, lease, or harvesting for any period during which the organization ceases to qualify as a qualified organization.

(ii) EXCEEDING LIMITS ON HARVESTING.—The term ''qualified harvesting activity'' shall not include any sale, lease, or harvesting of standing timber on land acquired with proceeds of

qualified forest conservation bonds to the extent that—

(I) the average annual area of timber harvested from such land exceeds 2.5 percent of the total area of such land or,

(II) the quantity of timber removed from such land exceeds the quantity which can be removed from such land annually in perpetuity on a sustained-yield basis with respect to such land.

The limitations under subclauses (I) and (II) shall not apply to post-fire restoration and rehabilitation or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophes, or which are in imminent danger from insect or disease attack.

(4) TERMINATION.—This subsection shall not apply to any qualified harvesting activity of a qualified organization occurring after the date on which there is no outstanding qualified forest conservation bond with respect to such qualified organization or any such bond ceases to be a tax-exempt bond.

(5) PARTIAL RECAPTURE OF BENEFITS IF HARVESTING LIMIT EXCEEDED.—If, as of the date that this subsection ceases to apply under paragraph (3), the average annual area of timber harvested from the land exceeds the requirement of paragraph (3)(B)(ii)(I), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be increased, under rules prescribed by the Secretary of the Treasury, by the sum of the tax benefits attributable to such excess and interest at the underpayment rate under section 6621 of such Code for the period of the underpayment.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED CONSERVATION PLAN.—The term ''qualified conservation plan'' means a multiple land use program or plan which—

(A) is designed and administered primarily for the purposes of protecting and enhancing wildlife and fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land,

(B) mandates that conservation of forest and forest land is the single-most significant use of the forest and forest land, and

(C) requires that timber harvesting be consistent with—

(i) restoring and maintaining reference conditions for the region's ecotype,

(ii) restoring and maintaining a representative sample of young, mid, and late successional forest age classes,

(iii) maintaining or restoring the resources' ecological health for purposes of preventing damage from fire, insect, or disease,

(iv) maintaining or enhancing wildlife or fish habitat, or

(v) enhancing research opportunities in sustainable renewable resource uses.

(2) CONSERVATION RESTRICTION.—The conservation restriction described in this paragraph is a restriction which—

(A) is granted in perpetuity to an unrelated person which is described in section 170(h)(3) of such Code and which, in the case of a nongovernmental unit, is organized and operated for conservation purposes,

(B) meets the requirements of clause (ii) or (iii)(II) of section 170(h)(4)(A) of such Code,

(C) obligates the qualified organization to pay the costs incurred by the holder of the conservation restriction in monitoring compliance with such restriction, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term ''qualified organization'' means an organization—

(A) which is a nonprofit organization substantially all the activities of which are charitable, scientific, or educational, including acquiring, protecting, restoring, managing, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific and public benefit,

(B) more than half of the value of the property of which consists of forests and forest land acquired with the proceeds from qualified forest conservation bonds,

(C) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques,

(D) which has at all times a board of directors—

(i) at least 20 percent of the members of which represent the holders of the conservation restriction described in paragraph (2),

(ii) at least 20 percent of the members of which are public officials, and

(iii) not more than one-third of the members of which are individuals who are or were at any time within 5 years before the beginning of a term of membership on the board, an employee of, independent contractor with respect to, officer of, director of, or held a material financial interest in, a commercial forest products enterprise with which the qualified organization has a contractual or other financial arrangement,

(E) the bylaws of which require at least two-thirds of the members of the board of directors to vote affirmatively to approve the qualified conservation plan and any change thereto, and

(F) upon dissolution, is required to dedicate its assets to—

(i) an organization described in section 501(c)(3) of such Code which is organized and operated for conservation purposes, or

(ii) a governmental unit described in section 170(c)(1) of such Code.

(4) UNRELATED PERSON.—The term ''unrelated person'' means a person who is not a related person.

(5) RELATED PERSON.—A person shall be treated as related to another person if—

(A) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or 707(b)(1), of such Code, determined by substituting ''25 percent'' for ''50 percent'' each place it appears therein, and

(B) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

SEC. 616. INDIAN SCHOOL CONSTRUCTION.

(a) DEFINITIONS.—In this section:

(1) BUREAU.—The term ''Bureau'' means the Bureau of Indian Affairs of the Department.

(2) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(3) ESCROW ACCOUNT.—The term ''escrow account'' means the tribal school modernization escrow account established under subsection (b)(6)(B)(i).

(4) INDIAN.—The term ''Indian'' means any individual who is a member of an Indian tribe.

(5) INDIAN TRIBE.—

(A) IN GENERAL.—The term ''Indian tribe'' has the meaning given the term ''Indian tribal government'' by section 7701(a)(40) of the Internal Revenue Code of 1986 (including the application of section 7871(d) of that Code).

(B) INCLUSION.—The term ''Indian tribe'' includes a consortium of Indian tribes approved by the Secretary.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) TRIBAL SCHOOL.—The term ''tribal school'' means an elementary school, secondary school, or dormitory that—

(A) is operated by a tribal organization or the Bureau for the education of Indian children; and

(B) under a contract, a grant, or an agreement, or for a Bureau-operated school, receives financial assistance to pay the costs of operation from funds made available under—

(i) section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(a), 458d); or

(ii) the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.).

(b) ISSUANCE OF BONDS.—

(1) IN GENERAL.—The Secretary shall establish a pilot program under which eligible Indian tribes may issue qualified tribal school modernization bonds to provide funding for the construction, rehabilitation, or repair of tribal schools (including the advance planning and design of tribal schools).

(2) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible to issue any qualified tribal school modernization bond under the program under paragraph (1), an Indian tribe shall—

(i) prepare and submit to the Secretary a plan of construction that meets the requirements of subparagraph (B);

(ii) provide for quarterly and final inspection of the project by the Bureau; and

(iii) pledge that the facilities financed by the bond will be used primarily for elementary and secondary educational purposes for not less than the period during which the bond remains outstanding.

(B) PLAN OF CONSTRUCTION.—A plan of construction referred to in subparagraph (A)(i) meets the requirements of this subparagraph if the plan—

(i) contains a description of the construction to be carried out with funding provided under a qualified tribal school modernization bond;

(ii) demonstrates that a comprehensive survey has been completed to determine the construction needs of the tribal school involved;

(iii) contains assurances that funding under the bond will be used only for the activities described in the plan;

(iv) contains a response to the evaluation criteria contained in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999; and

(v) contains any other reasonable and related information determined to be appropriate by the Secretary.

(C) PRIORITY.—In determining whether an Indian tribe is eligible to participate in the program under this subsection, the Secretary shall give priority to an Indian tribe that, as demonstrated by the relevant plans of construction, will fund projects—

(i) described in the Education Facilities Replacement Construction Priorities List, as of fiscal year 2000, of the Bureau (65 Fed. Reg. 4623);

(ii) described in any subsequent priorities list published in the Federal Register; or

(iii) that meet the criteria for ranking schools as described in Instructions and Application for Replacement School Construction, Revision 6, dated February 6, 1999.

(D) ADVANCE PLANNING AND DESIGN FUNDING.—

(i) IN GENERAL.—An Indian tribe may propose in the plan of construction of the Indian tribe to receive advance planning and design funding from the escrow account.

(ii) CONDITIONS ON ALLOCATION OF FUNDS.—As a condition to the allocation to an Indian tribe of advance planning and design funds from the escrow account under clause (i), the Indian tribe shall agree—

(I) to issue qualified tribal school modernization bonds after the date of receipt of the funds; and

(II) as a condition of each bond issuance, that the Indian tribe will deposit into the escrow account, or a fund managed by the trustee as described in paragraph (4)(C), an amount equal to the amount of funds received from the escrow account.

(3) PERMISSIBLE ACTIVITIES.—In addition to the use of funds permitted under paragraph (1), an Indian tribe may use amounts received through the issuance of a qualified tribal school modernization bond—

(A) to enter into and make payments under contracts with licensed and bonded architects, engineers, and construction firms—

(i) to determine the needs of the tribal school; and

(ii) for the design and engineering of the tribal school;

(B) enter into and make payments under contracts with financial advisers, underwriters, attorneys, trustees, and other professionals who would be able to provide assistance to the Indian tribe in issuing bonds; and

(C) carry out other activities determined to be appropriate by the Secretary.

(4) BOND TRUSTEE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, any qualified tribal school modernization bond issued by an Indian tribe under this subsection shall be subject to a trust agreement between the Indian tribe and a trustee.

(B) TRUSTEE.—Any bank or trust company that meets requirements established by the Secretary may be designated as a trustee under subparagraph (A).

(C) CONTENT OF TRUST AGREEMENT.—A trust agreement entered into by an Indian tribe under this paragraph shall specify that the trustee, with respect to any bond issued under this subsection, shall—

(i) act as a repository for the proceeds of the bond;

(ii) make payments to bondholders;

(iii) receive, as a condition to the issuance of the bond, a transfer of funds from the escrow account, or from other funds furnished by or on behalf of the Indian tribe, in an amount that (including interest earnings from the investment of the funds in obligations of, or fully guaranteed by, the United States, or from other investments authorized by paragraph (10)) will produce funds sufficient to timely pay in full the entire principal amount of the bond on the stated maturity date of the bond;

(iv) invest the funds transferred under clause (iii) in an investment described in that clause; and

(v)(I) hold and invest the funds transferred under clause (iii) in a segregated fund or account under the agreement; and

(II) use the fund or account solely for payment of the costs of items described in paragraph (3).

(D) REQUIREMENTS FOR MAKING DIRECT PAYMENTS.—

(i) PAYMENTS.—

(I) IN GENERAL.—Notwithstanding any other provision of law, the trustee shall make any payment referred to in subparagraph (C)(v) in accordance with such requirements as the Indian tribe shall prescribe in the trust agreement entered into under subparagraph (C).

(II) INSPECTION.—Before making a payment for a project to a contractor under subparagraph (C)(v), to ensure completion of the project, the trustee shall require an inspection of the project by—

(aa) a local financial institution; or

(bb) an independent inspecting architect or engineer.

(ii) CONTRACTS.—Each contract referred to in paragraph (3) shall specify, or be renegotiated to specify, that payments under the contract shall be made in accordance with this paragraph.

(5) PAYMENTS OF PRINCIPAL AND INTEREST.—

(A) PRINCIPAL.—

(i) IN GENERAL.—No principal payment on any qualified tribal school modernization bond shall be required under this subsection until the final, stated date on which the bond reaches maturity.

(ii) MATURITY; OUTSTANDING PRINCIPAL.—With respect to a qualified tribal school modernization bond issued under this subsection—

(I) the bond shall reach maturity not later than 15 years after the date of issuance of the bond; and

(II) on the date on which the bond reaches maturity, the entire outstanding principal under the bond shall become due and payable.

(B) INTEREST.—There shall be awarded a tax credit under section 1400M of the Internal Revenue Code of 1986 in lieu of interest on a qualified tribal school modernization bond issued under this subsection.

(6) BOND GUARANTEES.—

(A) IN GENERAL.—Payment of the principal portion of a qualified tribal school modernization bond issued under this subsection shall be guaranteed solely by amounts deposited with each respective bond trustee as described in paragraph (4)(C)(iii).

(B) ESTABLISHMENT OF ACCOUNT.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may—

(I) establish a tribal school modernization escrow account; and

(II) beginning in fiscal year 2005, from amounts made available for school replacement under the construction account of the Bureau, deposit not more than $30,000,000 for each fiscal year into the escrow account.

(ii) TRANSFERS OF EXCESS PROCEEDS.—Excess proceeds held under any trust agreement that are not needed for any of the purposes described in clauses (iii) and (v) of paragraph (4)(C) shall be transferred, from time to time, by the trustee for deposit into the escrow account.

(iii) PAYMENTS.—The Secretary shall use any amounts deposited in the escrow account under clauses (i) and (ii)—

(I) to make payments to trustees appointed and acting in accordance with paragraph (4); or

(II) to make payments described in paragraph (2)(D).

(7) LIMITATIONS.—

(A) OBLIGATION TO REPAY.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the principal amount on any qualified tribal school modernization bond issued under this subsection shall be repaid only to the extent of any escrowed funds provided under paragraph (4)(C)(iii).

(ii) NO GUARANTEE.—No qualified tribal school modernization bond issued by an Indian tribe under this subsection shall be an obligation of, and no payment of the principal of such a bond shall be guaranteed by—

(I) the United States;

(II) the Indian tribe; or

(III) the tribal school for which the bond was issued.

(B) LAND AND FACILITIES.—No land or facility purchased or improved with amounts derived from a qualified tribal school modernization bond issued under this subsection shall be mortgaged or used as collateral for the bond.

(8) SALE OF BONDS.—A qualified tribal school modernization bond may be sold at a purchase price equal to, in excess of, or at a discount from, the par amount of the bond.

(9) TREATMENT OF TRUST AGREEMENT EARNINGS.—No amount earned through the investment of funds under the control of a trustee under any trust agreement described in paragraph (4) shall be subject to Federal income taxation.

(10) INVESTMENT OF SINKING FUNDS.—A sinking fund established for the purpose of the payment of principal on a qualified tribal school modernization bond issued under this subsection shall be invested in—

(A) obligations issued by or guaranteed by the United States; or

(B) such other assets as the Secretary of the Treasury may by regulation allow.

(c) EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS.—Chapter 1 is amended by adding at the end the following new subchapter:

"Subchapter Z—Tribal School Modernization Provisions

''Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

"SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL SCHOOL MODERNIZATION BONDS.

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified tribal school modernization bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tribal school modernization bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tribal school modernization bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (1), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the date of sale of the issue) on outstanding long-term corporate obligations (as determined by the Secretary).

''(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

''(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

''(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND; OTHER DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED TRIBAL SCHOOL MODERNIZATION BOND.—

''(A) IN GENERAL.—The term 'qualified tribal school modernization bond' means, subject to subparagraph (B), any bond issued as part of an issue under section 616(b) of the Jumpstart Our Business Strength (JOBS) Act, as in effect on the date of the enactment of this section, if—

''(i) 95 percent or more of the proceeds of such issue are to be used for the construction, rehabilitation, or repair of a school facility funded by the Bureau of Indian Affairs of the Department of the Interior or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

''(ii) the bond is issued by an Indian tribe,

''(iii) the issuer designates such bond for purposes of this section, and

''(iv) the term of each bond which is part of such issue does not exceed 15 years.

''(B) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

''(i) NATIONAL LIMITATION.—There is a national qualified tribal school modernization bond limitation for each calendar year. Such limitation is—

''(I) $200,000,000 for 2005,

''(II) $200,000,000 for 2006, and

''(III) zero after 2006.

''(ii) ALLOCATION OF LIMITATION.—The national qualified tribal school modernization bond limitation shall be allocated to Indian tribes by the Secretary of the Interior subject to

the provisions of section 616 of the Jumpstart Our Business Strength (JOBS) Act, as in effect on the date of the enactment of this section.

''(iii) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any Indian tribe shall not exceed the limitation amount allocated to such government under clause (ii) for such calendar year.

''(iv) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

''(I) the limitation amount under this subparagraph, exceeds

''(II) the amount of qualified tribal school modernization bonds issued during such year,

the limitation amount under this subparagraph for the following calendar year shall be increased by the amount of such excess. The preceding sentence shall not apply if such following calendar year is after 2012.

''(2) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15.

Such term includes the last day on which the bond is outstanding.

''(3) BOND.—The term 'bond' includes any obligation.

''(4) TRIBE.—The term 'tribe' has the meaning given the term 'Indian tribal government' by section 7701(a)(40), including the application of section 7871(d). Such term includes any consortium of tribes approved by the Secretary of the Interior.

''(e) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

''(f) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified tribal school modernization bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(g) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified tribal school modernization bonds on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

''(h) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.

''(i) REPORTING.—Issuers of qualified tribal school modernization bonds shall submit reports similar to the reports required under section 149(e).''.

(d) CONFORMING AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

''SUBCHAPTER Z. Tribal school modernization provisions.''.

(e) ADDITIONAL PROVISIONS.—

(1) SOVEREIGN IMMUNITY.—This section and the amendments made by this section shall not be construed to impact, limit, or affect the sovereign immunity of the Federal Government or any State or tribal government.

(2) APPLICATION.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act with respect to bonds issued after December 31, 2004, regardless of the status of regulations promulgated thereunder.

Subtitle C—Provisions Relating to Depreciation

SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(a) IN GENERAL.—Section 168(k)(2)(D) (relating to special rules) is amended by adding at the end the following new clause:

''(iii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

''(I) property is originally placed in service after September 10, 2001, by the lessor of such property,

''(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date so placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

''(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale, so long as no previous owner of such property elects the application of this subsection with respect to such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) CERTAIN AIRCRAFT.—The term 'qualified property' includes property—

''(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

''(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

''(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

''(I) 10 percent of the cost, or

''(II) $100,000, and

''(iv) which has—

''(I) an estimated production period exceeding 4 months, and

''(II) a cost exceeding $200,000.''.

(2) PLACED IN SERVICE DATE.—Clause (iv) of section 168(k)(2)(A) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(b) CONFORMING AMENDMENTS.—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).''.

(2) Section 168(k)(4)(A)(ii) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(D)''.

(3) Section 168(k)(4)(B)(iii) is amended by inserting ''and paragraph (2)(C)'' after ''of this paragraph)''.

(4) Section 168(k)(4)(C) is amended by striking ''subparagraphs (B) and (D)'' and inserting ''subparagraphs (B), (C), and (E)''.

(5) Section 168(k)(4)(D) is amended by striking ''Paragraph (2)(E)'' and inserting ''Paragraph (2)(F)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 623. MODIFICATION OF CLASS LIFE FOR CERTAIN TRACK FACILITIES.

(a) 7-YEAR PROPERTY.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

''(ii) any motorsports entertainment complex, and''.

(b) DEFINITION.—Section 168(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

''(A) IN GENERAL.—The term 'motorsports entertainment complex' means a racing track facility which—

''(i) is permanently situated on land, and

''(ii) during the 36-month period following the first day of the month in which the asset is placed in service, is scheduled to host 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

''(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the complex and provided for the benefit of patrons of the complex—

''(i) ancillary grounds and facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

''(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

''(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

''(C) EXCEPTION.—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act and before January 1, 2008.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to affect the treatment of expenses incurred on or before the date of the enactment of this Act.

SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.

(a) ELECTION TO INCREASE MINIMUM TAX CREDIT LIMITATION IN LIEU OF BONUS DEPRECIATION.—

(1) IN GENERAL.—Section 53 (relating to credit for prior year minimum tax liability) is amended by adding at the end the following new subsection:

''(e) ADDITIONAL CREDIT IN LIEU OF BONUS DEPRECIATION.—

''(1) IN GENERAL.—In the case of a corporation making an election under this subsection for a taxable year, the limitation under subsection (c) shall be increased by an amount equal to 50 percent of the bonus depreciation amount.

''(2) BONUS DEPRECIATION AMOUNT.—For purposes of paragraph (1), the bonus depreciation amount for any taxable year is an amount (not in excess of $25,000,000) equal to the product of—

''(A) 30 percent, and

''(B) the excess (if any) of—

''(i) the aggregate amount of depreciation which would be determined under section 168 for property placed in service during such taxable year if no election under this subsection were made, over

''(ii) the aggregate allowance for depreciation allowable with respect to such property placed in service for such taxable year.

''(3) AGGREGATION RULE.—All members of the same controlled group of corporations shall be

treated as 1 corporation for purposes of this subsection.

''(4) ELECTION.—Sections 168(k) (other than paragraph (2)(F) thereof) shall not apply to any property placed in service during a taxable year by a corporation making an election under this subsection for such taxable year. An election under this subsection may only be revoked with the consent of the Secretary.

''(5) CREDIT REFUNDABLE.—The aggregate increase in the credit allowed by this section for any taxable year by reason of this subsection shall for purposes of this title (other than subsection (b)(2) of this section) be treated as a credit allowed to the taxpayer under subpart C.''.

(2) CONFORMING AMENDMENTS.—Subsection (k) of section 168 is amended by adding at the end the following new paragraph:

''(5) CROSS REFERENCE.—For an election to claim certain minimum tax credits in lieu of the allowance determined under this subsection, see section 53(e).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after December 31, 2003.

(b) USE OF GENERAL BUSINESS CREDITS AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 38(c) (relating to limitations based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULE FOR 2004.—Notwithstanding the preceding provisions of this paragraph, in the case of any taxable year beginning in 2004, the credit allowed under subsection (a) shall not exceed the greater of—

''(A) the amount determined under this subsection without regard to this paragraph, or

''(B) 50 percent of the lesser of—

''(i) the amount which would be determined under this subsection if the tentative minimum tax were treated as being zero in applying paragraph (1) to such credit, or

''(ii) the amount of the current year business credit.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning in 2004.

Subtitle D—Expansion of Business Credit

SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by redesignating sections 45E and 45F as sections 45F and 45G, respectively, and by inserting after section 45D the following new section:

''SEC. 45E. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) 5 percent with respect to the first 3 credit allowance dates, and

''(B) 6 percent with respect to the remainder of the credit allowance dates.

''(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term 'credit allowance date' means, with respect to any qualified equity investment—

''(A) the date on which such investment is initially made, and

''(B) each of the 6 anniversary dates of such date thereafter.

''(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified equity investment' means any equity investment in a reservation development entity if—

''(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

''(B) substantially all of such cash is used by the reservation development entity to make qualified low-income reservation investments, and

''(C) such investment is designated for purposes of this section by the reservation development entity.

Such term shall not include any equity investment issued by a reservation development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

''(2) LIMITATION.—The maximum amount of equity investments issued by a reservation development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

''(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the reservation development entity are invested in qualified low-income reservation investments.

''(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified equity investment' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

''(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

''(6) EQUITY INVESTMENT.—The term 'equity investment' means—

''(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

''(B) any capital interest in an entity which is a partnership.

''(c) RESERVATION DEVELOPMENT ENTITY.—For purposes of this section—

''(1) IN GENERAL.—The term 'reservation development entity' means any domestic corporation or partnership if—

''(A) the primary mission of the entity is serving, or providing investment capital for, low-income reservations,

''(B) the entity maintains accountability to residents of low-income reservations through their representation on any governing board of the entity or on any advisory board to the entity, and

''(C) the entity is certified by the Secretary for purposes of this section as being a reservation development entity.

''(2) EXCEPTION.—For purposes of subparagraph (C) of paragraph (1), the Secretary shall not certify an entity as a reservation development entity if such entity is also certified as a qualified community development entity under section 45D(c).

''(d) QUALIFIED LOW-INCOME RESERVATION INVESTMENTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified low-income reservation investment' means—

''(A) any capital or equity investment in, or loan to, any qualified active low-income reservation business,

''(B) the purchase from another reservation development entity of any loan made by such entity which is a qualified low-income reservation investment,

''(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income reservations, and

''(D) any equity investment in, or loan to, any reservation development entity.

''(2) QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified active low-income reservation business' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

''(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income reservation,

''(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income reservation,

''(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income reservation,

''(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

''(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

''(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

''(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—The term 'qualified active low-income reservation business' includes any trades or businesses which would qualify as a qualified active low-income reservation business if such trades or businesses were separately incorporated.

''(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term 'qualified business' has the meaning given to such term by section 45D(d)(3).

''(e) LOW-INCOME RESERVATION.—For purposes of this section, the term 'low-income reservation' means any Indian reservation (as defined in section 168(j)(6)) which has a poverty rate of at least 40 percent.

''(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

''(1) IN GENERAL.—There is a Native American new markets tax credit limitation of $50,000,000 for each of calendar years 2004 through 2007.

''(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among reservation development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

''(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

''(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income reservation investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

''(3) CARRYOVER OF UNUSED LIMITATION.—If the Native American new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

''(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

''(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a reservation development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

''(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

''(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

''(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

''(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a reservation development entity if—

''(A) such entity ceases to be a reservation development entity,

''(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

''(C) such investment is redeemed by such entity.

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

''(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

''(2) which prevent the abuse of the purposes of this section,

''(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

''(4) which impose appropriate reporting requirements, and

''(5) which apply the provisions of this section to newly formed entities.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 is amended by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively, and by inserting after paragraph (13) the following new paragraph:

''(14) the Native American new markets tax credit determined under section 45E(a),''.

(2) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

''(10) NO CARRYBACK OF NATIVE AMERICAN NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45E may be carried back to a taxable year ending before January 1, 2004.''.

(c) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by redesignating paragraph (10) as paragraph (11), by striking ''and'' at the end of paragraph (9), and by inserting after paragraph (9) the following new paragraph:

''(10) the Native American new markets tax credit determined under section 45E(a), and''.

(d) CONFORMING AMENDMENTS.—

(1) Section 38(b)(15), as redesignated by subsection (b)(1), is amended—

(A) by striking ''45E(c)'' and inserting ''45F(c)'', and

(B) by striking ''45E(a)'' and inserting ''45F(a)''.

(2) Section 38(b)(16), as redesignated by subsection (b)(1), is amended by striking ''45F(a)'' and inserting ''45G(a)''.

(3) Section 39(d)(11), as redesignated by subsection (b)(2), is amended by striking ''section 45E'' and inserting ''section 45F''.

(4) Section 196(c)(11), as redesignated by subsection (c), is amended by striking ''45E(a)'' and inserting ''45F(a)''.

(5) Section 1016(a)(28) is amended—

(A) by striking ''under section 45F'' and inserting ''under section 45G'', and

(B) by striking ''section 45F(f)(1)'' and inserting ''section 45G(f)(1)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the items relating to sections 45E and 45F and inserting the following:

''Sec. 45E. New markets tax credit for Native American reservations.

''Sec. 45F. Small employer pension plan startup costs.

''Sec. 45G. Employer-provided child care credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to investments made after December 31, 2003.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45E(f)(2) of the Internal Revenue Code of 1986, as added by this section;

(2) the competitive procedure through which such allocations are made; and

(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.

(g) AUDIT AND REPORT.—Not later than January 31 of 2007 and 2010, the Comptroller General of the United States shall, pursuant to an audit of the Native American new markets tax credit program established under section 45E of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all reservation development entities that receive an allocation under the Native American new markets credit under such section.

(h) GRANTS IN COORDINATION WITH CREDIT.—

(1) IN GENERAL.—The Secretary of the Treasury is authorized to award a grant of not more than $1,000,000 to the First Nations Oweesta Corporation.

(2) USE OF FUNDS.—The grant awarded under paragraph (1) may be used—

(A) to enhance the capacity of people living on low-income reservations (within the meaning of section 45E(e) of the Internal Revenue Code of 1986, as added by this section) to access, apply, control, create, leverage, utilize, and retain the financial benefits to such low-income reservations which are attributable to qualified low-income reservation investments (within the meaning of section 45E(d) of such Code), and

(B) to provide access to appropriate financial capital for the development of such low-income reservations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for fiscal years 2004 through 2014 to carry out the provisions of this subsection.

SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

''SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

''(1) the actual compensation amount with respect to such employee for such taxable year, or

''(2) $30,000.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

''(B) hospitalization incident to such duty.

''(2) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(e) PORTION OF CREDIT REFUNDABLE.—

''(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

''(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'employer payroll taxes' means the taxes imposed by—

''(i) section 3111(b), and

''(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

''(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

''(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term 'qualified first responder' means any person who is—

''(A) employed as a law enforcement official, a firefighter, or a paramedic, and

''(B) a Ready Reserve-National Guard employee.''.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following:

''(17) the Ready Reserve-National Guard employee credit determined under section 45H(a).''.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting ''45H(a),'' after ''45A(a),''.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following:

''Sec. 45H. Ready Reserve-National Guard employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding after section 30C the following new section:

''SEC. 30D. READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the employment credits for each qualified replacement employee under this section.

''(2) EMPLOYMENT CREDIT.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to 50 percent of the lesser of—

''(A) the individual's qualified compensation attributable to service rendered as a qualified replacement employee, or

''(B) $12,000.

''(b) QUALIFIED COMPENSATION.—The term 'qualified compensation' means—

''(1) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(2) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(3) group health plan costs (if any) with respect to the qualified replacement employee.

''(c) QUALIFIED REPLACEMENT EMPLOYEE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified replacement employee' means an individual who is hired to replace a Ready Reserve-National Guard employee or a Ready Reserve-National Guard self-employed taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee or Ready Reserve-National Guard self-employed taxpayer participates in qualified active duty, including time spent in travel status.

''(2) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' has the meaning given such term by section 45H(d)(3).

''(3) READY RESERVE-NATIONAL GUARD SELF-EMPLOYED TAXPAYER.—The term 'Ready Reserve-National Guard self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in section 10142 and 10101 of title 10, United States Code.

''(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a small business employer or a Ready Reserve-National Guard self-employed taxpayer.

''(2) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(3) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' has the meaning given such term by section 45H(d)(1).

''(4) SPECIAL RULES FOR CERTAIN MANUFACTURERS.—

''(A) IN GENERAL.—In the case of any qualified manufacturer—

''(i) subsection (a)(2)(B) shall be applied by substituting '$20,000' for '$12,000', and

''(ii) paragraph (2)(A) of this subsection shall be applied by substituting '100' for '50'.

''(B) QUALIFIED MANUFACTURER.—For purposes of this paragraph, the term 'qualified manufacturer' means any person if—

''(i) the primary business of such person is classified in sector 31, 32, or 33 of the North American Industrial Classification System, and

''(ii) all of such person's facilities which are used for production in such business are located in the United States.

''(5) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(6) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(2) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) (relating to rule for employment credits), as amended by this Act, is amended—

(A) by inserting ''or compensation'' after ''salaries'', and

(B) by inserting ''30D,'' before ''45A(a),''.

(3) CONFORMING AMENDMENT.—Section 55(c)(2), as amended by this Act, is amended by inserting ''30D(e)(1),'' after ''30C(e),''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 30C the following new item:

''Sec. 30D. Credit for replacement of activated military reservists.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(c) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

''(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

''(A) the product of—

''(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

''(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1) divided by the number of days in the taxable year, over

''(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.''

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking ''The'' and inserting ''Except as provided in paragraph (4), the''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

SEC. 633. RURAL INVESTMENT TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following:

''SEC. 42A. RURAL INVESTMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the rural investment credit determined under this section for any taxable year in the credit period shall be an amount equal to the applicable percentage of the eligible basis of each qualified rural investment building.

''(b) APPLICABLE PERCENTAGE: 70 PERCENT PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PERCENT PRESENT VALUE CREDIT FOR EXISTING BUILDINGS.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means the appropriate percentage prescribed by the Secretary for the earlier of—

''(A) the first month of the credit period with respect to a rural investment building, or

''(B) at the election of the taxpayer, the month in which the taxpayer and the rural investment credit agency enter into an agreement

with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the rural investment credit dollar amount to be allocated to such building. A month may be elected under subparagraph (B) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

''(2) METHOD OF PRESCRIBING PERCENTAGES.—The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

''(A) 70 percent of the eligible basis of a new building, and

''(B) 30 percent of the eligible basis of an existing building.

''(3) METHOD OF DISCOUNTING.—The present value under paragraph (2) shall be determined—

''(A) as of the last day of the 1st year of the 10-year period referred to in paragraph (2),

''(B) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under subparagraph (A) or (B) of paragraph (1) and compounded annually, and

''(C) by assuming that the credit allowable under this section for any year is received on the last day of such year.

''(c) ELIGIBLE BASIS; QUALIFIED RURAL INVESTMENT BUILDING.—For purposes of this section—

''(1) ELIGIBLE BASIS.—

''(A) IN GENERAL.—The eligible basis of any qualified rural investment building for any taxable year shall be determined under rules similar to the rules under section 42(d), except that—

''(i) the determination of the adjusted basis of any building shall be made as of the beginning of the credit period, and

''(ii) such basis shall include development costs properly attributable to such building.

''(B) DEVELOPMENT COSTS.—For purposes of subparagraph (A)(ii), the term 'development costs' includes—

''(i) site preparation costs,

''(ii) State and local impact fees,

''(iii) reasonable development costs,

''(iv) professional fees related to basis items,

''(v) construction financing costs related to basis items other than land, and

''(vi) on-site and adjacent improvements required by State and local governments.

''(2) QUALIFIED RURAL INVESTMENT BUILDING.—The term 'qualified rural investment building' means any building which is part of a qualified rural investment project at all times during the period—

''(A) beginning on the 1st day in the compliance period on which such building is part of such an investment project, and

''(B) ending on the last day of the compliance period with respect to such building.

''(d) REHABILITATION EXPENDITURES TREATED AS SEPARATE NEW BUILDING.—Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building under the rules of section 42(e).

''(e) DEFINITION AND SPECIAL RULES RELATING TO CREDIT PERIOD.—

''(1) CREDIT PERIOD DEFINED.—For purposes of this section, the term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is first placed in service.

''(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT PERIOD.—

''(A) IN GENERAL.—The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by multiplying such credit by the fraction—

''(i) the numerator of which is the number of full months of such year during which such building was in service, and

''(ii) the denominator of which is 12.

''(B) DISALLOWED 1ST YEAR CREDIT ALLOWED IN 11TH YEAR.—Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

''(3) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

''(f) QUALIFIED RURAL INVESTMENT PROJECT; QUALIFYING COUNTY.—For purposes of this section—

''(1) QUALIFIED RURAL INVESTMENT PROJECT.—The term 'qualified rural investment project' means any investment project of 1 or more qualified rural investment buildings located in a qualifying county (and, if necessary to the project, any contiguous county) and selected by the State according to its qualified rural investment plan.

''(2) QUALIFYING COUNTY.—The term 'qualifying county' means any county which—

''(A) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

''(B) during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

''(g) LIMITATION ON AGGREGATE CREDIT ALLOWABLE WITH RESPECT TO INVESTMENT PROJECTS LOCATED IN A STATE.—

''(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the rural investment credit dollar amount allocated to such building under rules similar to the rules of section 42(h)(1).

''(2) ALLOCATED CREDIT AMOUNT TO APPLY TO ALL TAXABLE YEARS ENDING DURING OR AFTER CREDIT ALLOCATION YEAR.—Any rural investment credit dollar amount allocated to any building for any calendar year—

''(A) shall apply to such building for all taxable years in the credit period ending during or after such calendar year, and

''(B) shall reduce the aggregate rural investment credit dollar amount of the allocating agency only for such calendar year.

''(3) RURAL INVESTMENT CREDIT DOLLAR AMOUNT FOR AGENCIES.—

''(A) IN GENERAL.—The aggregate rural investment credit dollar amount which a rural investment credit agency may allocate for any calendar year is the portion of the State rural investment credit ceiling allocated under this paragraph for such calendar year to such agency.

''(B) STATE CEILING INITIALLY ALLOCATED TO STATE RURAL INVESTMENT CREDIT AGENCIES.—Except as provided in subparagraphs (D) and (E), the State rural investment credit ceiling for each calendar year shall be allocated to the rural investment credit agency of such State. If there is more than 1 rural investment credit agency of a State, all such agencies shall be treated as a single agency.

''(C) STATE RURAL INVESTMENT CREDIT CEILING.—The State rural investment credit ceiling applicable to any State and any calendar year shall be an amount equal to the sum of—

''(i) the unused State rural investment credit ceiling (if any) of such State for the preceding calendar year,

''(ii) $185,000 for each qualifying county in the State,

''(iii) the amount of State rural investment credit ceiling returned in the calendar year, plus

''(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State rural investment credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate rural investment credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State rural investment credit ceiling returned in the calendar year equals the rural investment credit dollar amount previously allocated within the State to any investment project which fails to meet the 10 percent test under section 42(h)(1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified rural investment project within the period required by this section or the terms of the allocation or to any investment project with respect to which an allocation is canceled by mutual consent of the rural investment credit agency and the allocation recipient.

''(D) UNUSED RURAL INVESTMENT CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

''(i) IN GENERAL.—The unused rural investment credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

''(ii) UNUSED RURAL INVESTMENT CREDIT CARRYOVER.—For purposes of this subparagraph, the unused rural investment credit carryover of a State for any calendar year is the excess (if any) of the unused State rural investment credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—

''(I) the unused State rural investment credit ceiling for the year preceding such year, over

''(II) the aggregate rural investment credit dollar amount allocated for such year.

''(iii) FORMULA FOR ALLOCATION OF UNUSED RURAL INVESTMENT CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused rural investment credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

''(iv) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

''(I) which allocated its entire State rural investment credit ceiling for the preceding calendar year, and

''(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

''(E) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

''(F) POPULATION.—For purposes of this paragraph, population shall be determined in accordance with section 146(j).

''(G) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of a calendar year after 2005, the $185,000 amount in subparagraph (C) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—Any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

''(4) PORTION OF STATE CEILING SET-ASIDE FOR CERTAIN INVESTMENT PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—

''(A) IN GENERAL.—At least 10 percent of the State rural investment credit ceiling for any State for any calendar year shall be allocated to

qualified rural investment projects described in subparagraph (B).

''(B) INVESTMENT PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified rural investment project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 469(h)) in the development and operation of the investment project throughout the compliance period.

''(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if—

''(i) such organization is described in any paragraph of section 501(c) and is exempt from tax under section 501(a),

''(ii) such organization is determined by the State rural investment credit agency not to be affiliated with or controlled by a for-profit organization; and

''(iii) 1 of the exempt purposes of such organization includes the fostering of rural investment.

''(D) TREATMENT OF CERTAIN SUBSIDIARIES.—

''(i) IN GENERAL.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

''(ii) QUALIFIED CORPORATION.—For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

''(E) STATE MAY NOT OVERRIDE SET-ASIDE.—Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

''(F) CREDITS FOR QUALIFIED NONPROFIT ORGANIZATIONS.—

''(i) ALLOWANCE OF CREDIT.—Any credit which would be allowable under subsection (a) with respect to a qualified rural investment building of a qualified nonprofit organization if such organization were not exempt from tax under this chapter shall be treated as a credit allowable under subpart C to such organization.

''(ii) USE OF CREDIT.—A qualified nonprofit organization may assign, trade, sell, or otherwise transfer any credit allowable to such organization under subparagraph (A) to any taxpayer.

''(iii) CREDIT NOT INCOME.—A transfer under subparagraph (B) of any credit allowable under subparagraph (A) shall not result in income for purposes of section 511.

''(5) SPECIAL RULES.—

''(A) BUILDING MUST BE LOCATED WITHIN JURISDICTION OF CREDIT AGENCY.—A rural investment credit agency may allocate its aggregate rural investment credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

''(B) AGENCY ALLOCATIONS IN EXCESS OF LIMIT.—If the aggregate rural investment credit dollar amounts allocated by a rural investment credit agency for any calendar year exceed the portion of the State rural investment credit ceiling allocated to such agency for such calendar year, the rural investment credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

''(C) CREDIT REDUCED IF ALLOCATED CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT WHICH WOULD BE ALLOWABLE WITHOUT REGARD TO SALES CONVENTION, ETC.—

''(i) IN GENERAL.—The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

''(ii) DETERMINATION OF PERCENTAGE.—For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

''(I) the rural investment credit dollar amount allocated to such building bears to

''(II) the credit amount determined in accordance with clause (iii).

''(iii) DETERMINATION OF CREDIT AMOUNT.—The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if this section were applied without regard to paragraph (2)(A) of subsection (e).

''(D) RURAL INVESTMENT CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM ELIGIBLE BASIS.—In allocating a rural investment credit dollar amount to any building, the rural investment credit agency shall specify the applicable percentage and the maximum eligible basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum eligible basis so specified shall not exceed the applicable percentage and eligible basis determined under this section without regard to this subsection.

''(6) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) RURAL INVESTMENT CREDIT AGENCY.—The term 'rural investment credit agency' means any agency authorized to carry out this subsection.

''(B) POSSESSIONS TREATED AS STATES.—The term 'State' includes a possession of the United States.

''(7) PORTION OF STATE CEILING SET-ASIDE FOR QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDITS.—Not more than 10 percent of the State rural investment credit ceiling for any State for any calendar year may be allocated to qualified rural small business investment credits under section 42B.

''(h) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) COMPLIANCE PERIOD.—The term 'compliance period' means, with respect to any building, the period of 10 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

''(2) NEW BUILDING.—The term 'new building' means a building the original use of which begins with the taxpayer.

''(3) EXISTING BUILDING.—The term 'existing building' means any building which is not a new building.

''(4) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (i) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

''(i) RECAPTURE OF CREDIT.—If—

''(1) as of the close of any taxable year in the compliance period, the amount of the eligible basis of any building with respect to the taxpayer is less than

''(2) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount determined under rules similar to the rules of section 42(j).

''(j) CERTIFICATIONS AND OTHER REPORTS TO SECRETARY.—

''(1) CERTIFICATION WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—Following the close of the 1st taxable year in the credit period with respect to any qualified rural investment building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

''(A) the taxable year, and calendar year, in which such building was first placed in service,

''(B) the eligible basis of such building as of the beginning of the credit period,

''(C) the maximum applicable percentage and eligible basis permitted to be taken into account by the appropriate rural investment credit agency under subsection (g),

''(D) the election made under subsection (f) with respect to the qualified rural investment project of which such building is a part, and

''(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

''(2) ANNUAL REPORTS TO THE SECRETARY.—The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

''(A) the eligible basis for the taxable year of each qualified rural investment building of the taxpayer,

''(B) the information described in paragraph (1)(C) for the taxable year, and

''(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

''(3) ANNUAL REPORTS FROM RURAL INVESTMENT CREDIT AGENCIES.—Each agency which allocates any rural investment credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

''(A) the amount of rural investment credit amount allocated to each building for such year,

''(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

''(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

''(k) RESPONSIBILITIES OF RURAL INVESTMENT CREDIT AGENCIES.—

''(1) PLANS FOR ALLOCATION OF CREDIT AMONG INVESTMENT PROJECTS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, the rural investment credit dollar amount with respect to any building shall be zero unless—

''(i) such amount was allocated pursuant to a qualified rural investment plan of the agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

''(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such investment project and provides such individual a reasonable opportunity to comment on the investment project,

''(iii) a comprehensive market study of the development needs of individuals in the qualifying county to be served by the investment project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

''(iv) a written explanation is available to the general public for any allocation of a rural investment credit dollar amount which is not made in accordance with established priorities and selection criteria of the rural investment credit agency.

''(B) QUALIFIED RURAL INVESTMENT PLAN.—For purposes of this section, the term 'qualified rural investment plan' means any plan—

''(i) which sets forth selection criteria to be used to determine priorities of the rural investment credit agency which are appropriate to qualifying counties,

''(ii) which also gives preference in allocating rural investment credit dollar amounts among selected investment projects to—

''(I) investment projects that target those small rural counties with consistently high rates of net out-migration,

''(II) investment projects that link the economic development and job creation efforts of 2 or more small rural counties with high rates of net out-migration, and

''(III) investment projects that link the economic development and job creation efforts of 1 or more small rural counties in the State with high rates of net out-migration to related efforts in regions of such State experiencing economic growth, and

''(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance through regular site visits.

''(C) CERTAIN SELECTION CRITERIA MUST BE USED.—The selection criteria set forth in a qualified rural investment plan must include—

''(i) investment project location,

''(ii) technology and transportation infrastructure needs, and

''(iii) private development trends.

''(2) CREDIT ALLOCATED TO BUILDING NOT TO EXCEED AMOUNT NECESSARY TO ASSURE INVESTMENT PROJECT FEASIBILITY.—

''(A) IN GENERAL.—The rural investment credit dollar amount allocated to an investment project shall not exceed the amount the rural investment credit agency determines is necessary for the financial feasibility of the investment project and its viability as a qualified rural investment project throughout the compliance period.

''(B) AGENCY EVALUATION.—In making the determination under subparagraph (A), the rural investment credit agency shall consider—

''(i) the sources and uses of funds and the total financing planned for the investment project,

''(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

''(iii) the percentage of the rural investment credit dollar amount used for investment project costs other than the cost of intermediaries, and

''(iv) the reasonableness of the developmental and operational costs of the investment project. Clause (iii) shall not be applied so as to impede the development of investment projects in hard-to-develop areas.

''(C) DETERMINATION MADE WHEN CREDIT AMOUNT APPLIED FOR AND WHEN BUILDING PLACED IN SERVICE.—

''(i) IN GENERAL.—A determination under subparagraph (A) shall be made as of each of the following times:

''(I) The application for the rural investment credit dollar amount.

''(II) The allocation of the rural investment credit dollar amount.

''(III) The date the building is first placed in service.

''(ii) CERTIFICATION AS TO AMOUNT OF OTHER SUBSIDIES.—Prior to each determination under clause (i), the taxpayer shall certify to the rural investment credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

''(l) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) dealing with—

''(A) investment projects which include more than 1 building or only a portion of a building,

''(B) buildings which are sold in portions,

''(2) providing for the application of this section to short taxable years,

''(3) preventing the avoidance of the rules of this section, and

''(4) providing the opportunity for rural investment credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following:

''(18) the rural investment credit determined under section 42A(a).''.

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

''(12) NO CARRYBACK OF RURAL INVESTMENT CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the rural investment credit determined under section 42A may be carried back to a taxable year beginning before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 55(c)(1) is amended by inserting ''or subsection (i) or (j) of section 42A'' after ''section 42''.

(2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and (k)(1) of section 469 are each amended by inserting ''or 42A'' after ''section 42''.

(3) Section 772(a) is amended by striking ''and'' at the end of paragraph (10), by redesignating paragraph (11) as paragraph (12), and by inserting after paragraph (10) the following:

''(11) the rural investment credit determined under section 42A, and''.

(4) Section 774(b)(4) is amended by inserting '', 42A(i),'' after ''section 42(j)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 42 the following:

''Sec. 42A. Rural investment credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

SEC. 634. QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following:

''SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of a qualified rural small business, the amount of the qualified rural small business investment credit determined under this section for any taxable year is equal to 30 percent of the qualified expenditures for the taxable year of such business.

''(b) DOLLAR LIMITATION.—

''(1) IN GENERAL.—The credit allowable under subsection (a) for any taxable year shall not exceed the lesser of—

''(A) $5,000, or

''(B) the amount when added to the aggregate credits allowable to the taxpayer under subsection (a) for all preceding taxable years does not exceed $25,000.

''(2) NO DOUBLE CREDIT ALLOWED.—In the case of any qualified rural small business which places in service a qualified rural investment building with respect to which a rural investment credit is allowed under section 42A for any taxable year, paragraph (1)(A) shall be applied with respect to such taxable year by substituting 'zero' for '$5,000'.

''(c) QUALIFIED RURAL SMALL BUSINESS.—For purposes of this section, the term 'qualified rural small business' means any person if such person—

''(1) employed not more than 5 full-time employees during the taxable year,

''(2) materially and substantially participates in management,

''(3) is located in a qualifying county, and

''(4) submitted a qualified business plan with respect to which the rural investment credit agency with jurisdiction over such qualifying county has allocated a portion of the State rural investment ceiling for such taxable year under section 42A(g)(7).

For purposes of paragraph (1), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

''(d) QUALIFIED EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified expenditures' means expenditures normally associated with starting or expanding a business and included in a qualified business plan, including costs for capital, plant and equipment, inventory expenses, and wages, but not including interest costs.

''(2) ONLY CERTAIN EXPENDITURES INCLUDED FOR EXISTING BUSINESSES.—In the case of a qualified rural small business with respect to which a credit under subsection (a) was allowed for a preceding taxable year, such term shall include only so much of the expenditures described in paragraph (1) for the taxable year as exceed the aggregate of such expenditures for the preceding taxable year.

''(e) QUALIFIED BUSINESS PLAN.—For purposes of this section, the term 'qualified business plan' means a business plan which—

''(1) has been approved by the rural investment credit agency with jurisdiction over the qualifying county in which the qualified rural small business is located pursuant to such agency's rural investment plan, and

''(2) meets such requirements as the agency may specify.

''(f) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

''(1) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

''(2) no increase in the adjusted basis of any property shall result from such amount.

''(g) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) any term which is used in this section which is used in section 42A shall have the meaning given such term by section 42A, and

''(2) rules similar to the rules under subsections (j)(2), (j)(3), and (k) of section 42A shall apply.''.

(b) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following:

''(19) the qualified rural small business investment credit determined under section 42B(a).''.

(c) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

''(13) NO CARRYBACK OF QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualified rural small business investment credit determined under section 42B may be carried back to a taxable year beginning before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 42A the following:

''Sec. 42B. Qualified rural small business investment credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45I. RAILROAD TRACK MAINTENANCE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 30 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

''(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

''(1) $3,500, and

''(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

''(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means—

''(1) any Class II or Class III railroad, and

''(2) any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.

''(d) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term 'qualified railroad track maintenance expenditures' means expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—

''(1) CLASS II OR CLASS III RAILROAD.—For purposes of this section, the terms 'Class II railroad' and 'Class III railroad' have the meanings given such terms by the Surface Transportation Board.

''(2) CONTROLLED GROUPS.—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

''(3) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

''(f) APPLICATION OF SECTION.—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF RAILROAD TRACK MAINTENANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the railroad track maintenance credit determined under section 45I may be carried to a taxable year beginning before January 1, 2005.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the railroad track maintenance credit determined under section 45I(a).''.

(2) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) in the case of railroad track with respect to which a credit was allowed under section 45I, to the extent provided in section 45I(e)(3).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45H the following new item:

''Sec. 45I. Railroad track maintenance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 636. RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.

(a) RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45J. RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the railroad revitalization and security investment credit determined under this section for the taxable year is the amount equal to 50 percent of the qualified project expenditures paid or incurred by the taxpayer during the taxable year.

''(b) QUALIFIED PROJECT EXPENDITURES.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified project expenditures' means, with respect to any project for intercity passenger rail transportation (as defined under section 24102 of title 49, United States Code) which is included in a State rail plan, expenditures (whether or not otherwise chargeable to capital account) for—

''(A) planning,

''(B) environmental review and environmental impact mitigation,

''(C) track and track structure rehabilitation, relocation, improvement, and development,

''(D) railroad safety and security improvements,

''(E) communications and signaling improvements,

''(F) intercity passenger rail equipment acquisition, and

''(G) rail station and intermodal facilities development.

''(2) EXCEPTIONS.—An expenditure shall not be treated as a qualified project expenditure unless all persons which conduct rail operations over the infrastructure with respect to which such an expenditure is made—

''(A) are employers for purposes of the Railroad Retirement Act of 1974 and are carriers for purposes of the Railway Labor Act (unless such a person is an operator with respect to commuter rail passenger transportation (as defined in section 24102(4) of title 49, United States Code) of a State or local government authority (as such terms are defined in section 5302 of such title) eligible to receive financial assistance under section 5307 of such title, a contractor performing services in connection with the operations with respect to commuter rail passenger transportation (as so defined), or the Alaska Railroad or its contractors),

''(B) provide assurances to the State that any collective bargaining agreements with such a person's employees (including terms regulating the contracting of work) will remain in full force and effect according to the terms of the agreements for work performed for such a person on the railroad transportation corridor, and

''(C) comply with the protective agreements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 with respect to employees affected by actions taken in connection with the project.

''(c) LIMITATION.—

''(1) IN GENERAL.—The amount of the credit allowed under subsection (a) for any taxable year with respect to any project for which qualified project expenditures are made shall not exceed the limitation allocated to such project under this subsection for the calendar year in which the taxable year begins.

''(2) STATE LIMITATION.—

''(A) IN GENERAL.—There is a State railroad revitalization and security investment credit limitation for each calendar year. Such limitation is the amount which bears the same ratio to $165,000,000 as the allocation number for such State bears to the allocation number for all States.

''(B) ALLOCATION NUMBER.—For purposes of subparagraph (A), the allocation number is, with respect to any State, the sum of the following:

''(i) The number of railroad and public road at grade crossings on intercity passenger rail routes within the State.

''(ii) The number of intercity passenger train miles within the State.

''(iii) The number of intercity embarkations and disembarkations for each passenger within the State.

''(3) UNUSED CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

''(A) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which bears the same ratio to the unused credit carryover for all States for the calendar as the allocation number for such qualified State bears to the allocation number for all qualified States.

''(B) UNUSED CREDIT CARRYOVER.—For purposes of this paragraph, the term 'unused credit carryover' means, with respect to any State, the excess of the State limitation (determined under paragraph (2)) for the calendar year over the amount allocated by the State under paragraph (4) for such calendar year.

''(C) QUALIFIED STATES.—For purposes of this paragraph, the term 'qualified State' means any State—

''(i) which allocated its entire State limitation amount under paragraph (4) for the calendar year, and

''(ii) for which a request is made to receive an allocation under this paragraph.

''(4) ALLOCATION WITHIN STATES.—Each State shall allocate the limitation amount allocated to such State under paragraphs (2) and (3) to projects for intercity passenger rail transportation which are included in the State rail plan of such State.

''(5) NEW YORK CITY RAIL PROJECTS.—

''(A) IN GENERAL.—In addition to the amounts allocated under paragraph (2), the Secretary shall allocate a limitation of $200,000,000 to New York City, New York, for qualified project expenditures within the New York Liberty Zone (as defined in section 1400L(h)) for the period described in subsection (h).

''(B) ALLOCATION AMONG PROJECTS.—Of the limitation allocated under subparagraph (A)—

''(i) $100,000,000 shall be allocated to projects designated by the Mayor of New York City, New York, and

''(ii) $100,000,000 shall be allocated to projects designated by the Governor of New York.

''(C) SPECIAL RULE REGARDING QUALIFIED PROJECT EXPENDITURES.—For purposes of this paragraph, a qualified project expenditure shall include any expenditure for improvements to subway systems, for commuter rail systems, for rail links to airports, and for public infrastructure improvements in the vicinity of rail or subway stations.

''(d) STATE RAIL PLAN.—For purposes of this section, the term 'State rail plan' means a plan prepared and maintained in accordance with chapter 225 of title 49, United States Code.

''(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any property, the basis of such

property shall be reduced by the amount of the credit so allowed.

''(f) NO DOUBLE BENEFIT.—No credit shall be allowed under this section with respect to any expenditures for which a credit is allowed under section 45I.

''(g) CREDIT TRANSFERABILITY.—Any credit allowable under this section may be transferred (but not more than once) if—

''(1) the credit exceeds the tax liability of the taxpayer for the taxable year, or

''(2) the taxpayer is not subject to any tax imposed by this chapter by reason of having a tax-exempt status.

''(h) APPLICATION OF SECTION.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.''.

(2) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(15) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the railroad revitalization and security investment credit determined under section 45J(a).''.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) in the case of property with respect to which a credit was allowed under section 45J, to the extent provided in section 45J(e).''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45I the following new item:

''Sec. 45J. Railroad revitalization and security investment credit.''.

(5) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(b) STATE RAIL PLANS.—

(1) IN GENERAL.—Part B of subtitle V of title 49, United States Code, is amended by adding at the end the following:

''CHAPTER 225—STATE RAIL PLANS

''§ 22501. Authority

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) make the State's approved plan available to the public and transmit a copy to the Secretary of Transportation; and

''(4) revise the plan no less frequently than once every 5 years.

''§ 22502. Purposes

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To present priorities and strategies to enhance rail service in the State that benefits the public.

''(3) To serve as the basis for Federal and State rail investments within the State.

''(b) CONTENT.—The State rail plan shall establish the period covered by such plan.

''(c) CONSISTENCY WITH STATE TRANSPORTATION EFFORTS.—A State rail plan shall be consistent with the State transportation planning goals and programs and shall set forth rail transportation's role within the State transportation system.

''§ 22503. Transparency; coordination

''(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input on a proposed State rail plan under this chapter to the following:

''(1) The public.

''(2) Rail carriers.

''(3) Commuter and transit authorities operating in, or affected by rail operations within, the State.

''(4) Units of local government.

''(5) Other parties interested in the preparation and review of the State rail plan.

''(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives of regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

''§ 22504. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

''(3) A statement of the State's passenger rail service objectives, including minimum service levels, for intercity passenger rail transportation routes in the State.

''(4) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

''(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

''(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

''(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

''(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

''(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

''(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this chapter, and a plan for funding any recommended development of such corridors in the State.

''(12) A statement that the State satisfies the conditions set forth in section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

''(A) Two lists for rail capital projects, 1 list for freight rail capital projects and 1 list for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The lists of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Economic and employment impacts.

''(G) Projected ridership and other service measures for passenger rail projects.

''§ 22505. Approval

''The State rail plan approval authority established or designated under section 22501(b)(2) may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital improvement projects under the plan—

''(A) the project meets all safety and environmental requirements, including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right-of-way directly affected by the project that provides for the State to proceed with the project and includes assurances regarding capacity and compensation for use of such infrastructure or right-of-way, if applicable; and

''(3) the content of the plan is coordinated with State transportation plans developed pursuant to section 135 of title 23.

''§ 22506. Definitions

''In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit'—

''(A) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or other means; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between

the State and the affected persons or private entities.

''(2) PUBLIC BENEFIT.—The term 'public benefit'—

''(A) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and other positive community effects; and

''(B) shall be determined on a project-by-project basis, based upon an agreement between the State and the persons or private entities involved in the project.

''(3) STATE.—The term 'State' means any of the 50 States and the District of Columbia.

''(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term 'State rail transportation authority' means the State agency or official responsible under the direction of the Chief Executive of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan under this chapter.''.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of title 49, United States Code, is amended by inserting after the item relating to chapter 223 the following:

''225. STATE RAIL PLANS 22501.''.

SEC. 637. MODIFICATION OF TARGETED AREAS DESIGNATED FOR NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 45D(e) is amended to read as follows:

''(2) TARGETED POPULATIONS.—The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act.

SEC. 638. MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community) is amended by adding at the end the following new paragraph:

''(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

''(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

''(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO MAKE MOTION PICTURES MORE ACCESSIBLE TO THE DEAF AND HARD OF HEARING.

(a) IN GENERAL.—

(1) ALLOWANCE OF CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MOTION PICTURES FOR THE DEAF AND HARD OF HEARING.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the motion picture accessibility credit for any taxable year shall be an amount equal to 50 percent of the qualified expenditures made by the eligible taxpayer during the taxable year.

''(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means a taxpayer who is in the business of—

''(1) showing motion pictures to the public in theaters, or

''(2) producing or distributing such motion pictures.

''(c) QUALIFIED EXPENDITURES.—For purposes of this section, the term 'qualified expenditures' means amounts paid or incurred by the taxpayer for the purpose of making motion pictures accessible to individuals who are deaf or hard of hearing through the use of captioning technology.

''(d) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

''(e) NO DOUBLE BENEFIT.—In the case of the credit determined under this section, no deduction or credit shall be allowed for such amount under any other provision of this chapter.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', plus'', and by adding at the end the following new paragraph:

''(32) the motion picture accessibility credit determined under section 45T(a).''.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (38), by striking the period at the end of paragraph (39) and inserting '', and'', and by adding at the end the following new paragraph:

''(40) in the case of property with respect to which a credit was allowed under section 45T, to the extent provided in section 45T(d).''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules) is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF MOTION PICTURE ACCESSIBILITY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the motion picture accessibility credit determined under section 45T may be carried to a taxable year beginning before January 1, 2004.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45S the following new item:

''Sec. 45T. Expenditures to provide access to motion pictures for the deaf and hard of hearing.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

Subtitle E—Miscellaneous Provisions

SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 (relating to unrelated business taxable income), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

''(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

''(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible taxpayer' means, with respect to a property, any organization exempt from tax under section 501(a) which—

''(I) acquires from an unrelated person a qualifying brownfield property, and

''(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

''(ii) EXCEPTION.—Such term shall not include any organization which is—

''(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

''(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

''(III) the result of a reorganization of a business entity which was so potentially liable.

''(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualifying brownfield property' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

''(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

''(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

''(I) such property is transferred by the eligible taxpayer to an unrelated person, and

''(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required

under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

''(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

''(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

''(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

''(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

''(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

''(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

''(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

''(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible remediation expenditures' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

''(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

''(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

''(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

''(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

''(ii) EXCEPTIONS.—Such term shall not include—

''(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

''(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

''(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

''(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

''(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

''(G) SPECIAL RULES FOR PARTNERSHIPS.—

''(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

''(ii) QUALIFYING PARTNERSHIP.—The term 'qualifying partnership' means a partnership which—

''(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

''(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if 'qualified partnership' is substituted for 'eligible taxpayer' each place it appears therein (except subparagraph (D)(iii)), and

''(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

''(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

''(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

''(I) the use of special allocations of gains or losses, or

''(II) changes in ownership of partnership interests held by eligible taxpayers.

''(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

''(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

''(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

''(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

''(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

''(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

''(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

''(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

''(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting '25 percent' for '50 percent' each place it appears therein, and

''(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.''

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 514(b)(1) (defining debt-financed property) is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ''; or'', and by inserting after subparagraph (D) the following new subparagraph:

''(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.''.

(c) SAVINGS CLAUSE.—Nothing in the amendments made by this section shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.

SEC. 642. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN DEBT-FINANCED PROPERTIES.

(a) IN GENERAL.—Section 514(c)(6) (relating to acquisition indebtedness) is amended—

(1) by striking ''include an obligation'' and inserting ''include—

''(A) an obligation'',

(2) by striking the period at the end and inserting '', or'', and

(3) by adding at the end the following:

''(B) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

''(i) issued by such company under section 303(a) of such Act, and

''(ii) held or guaranteed by the Small Business Administration.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions made on or after the date of the enactment of this Act.

SEC. 643. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

''(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.''.

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

''(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term 'unlawful discrimination' means an act that is unlawful under any of the following:

''(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

''(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

''(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

''(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

''(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

''(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

''(8) Title IX of the Education Amendments of 1972 (29 U.S.C. 1681 et seq.).

''(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 201 et seq.).

''(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

''(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

''(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

''(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

''(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

''(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

''(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

''(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

''(18) Any provision of Fderal, State, or local law, or common law claims permitted under Federal, State, or local law—

''(i) providing for the enforcement of civil rights, or

''(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fees and costs paid after December 31, 2002, with respect to any judgment or settlement occurring after such date.

SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.

(a) IN GENERAL.—Section 108(f) (relating to student loans) is amended by adding at the end the following new paragraph:

''(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.''.

(b) TREATMENT FOR PURPOSES OF EMPLOYMENT TAXES.—Each of the following provisions is amended by inserting ''108(f)(4),'' after ''74(c),'':

(1) Section 3121(a)(20).

(2) Section 3231(e)(5).

(3) Section 3306(b)(16).

(4) Section 3401(a)(19).

(5) Section 209(a)(17) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.

SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) IN GENERAL.—Section 162(o) (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

''(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.''.

(b) CONFORMING AMENDMENT.—The heading for section 162(o) is amended by striking ''REIMBURSED''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS.

(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

(2) the amount of tax so imposed during such period.

(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section—

(1) IN GENERAL.—The term ''qualified naval ship contract'' means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

(2) ACCEPTANCE DATE.—The term ''acceptance date'' means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

(3) CONSTRUCTION COMMENCEMENT DATE.—The term ''construction commencement date'' means the date on which the physical fabrication of any section or component of the ship or submarine begins.

(d) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act.

SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS ACCOUNT PROVISIONS.

(a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus account) is amended by adding at the end the following:

''(g) SPECIAL RULES APPLICABLE DURING 2004 AND 2005.—In the case of any taxable year of a stock life insurance company beginning after December 31, 2003, and before January 1, 2006—

''(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

''(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following new sentence: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting ''drought, flood, or other weather-related conditions, or'' after ''because of'',

(2) by inserting ''in the case of soil contamination or other environmental contamination'' after ''including real property'', and

(3) by striking ''WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION'' in the heading and inserting ''IN CERTAIN CASES''.

(b) EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

(2) by adding at the end the following new paragraph:

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(c) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 650. MOTOR VEHICLE DEALER TRANSITIONAL ASSISTANCE.

(a) IN GENERAL.—For purposes of subtitle A of the Internal Revenue Code of 1986, in the case of a taxpayer who elects the application of this section and who was a party to a motor vehicle sales and service agreement with a motor vehicle manufacturer who announced in December 2000 that it would phase-out the motor vehicle brand to which such agreement relates—

(1) amounts received by such taxpayer from such manufacturer on account of the termination of such agreement (hereafter in this section referred to as ''termination payment'') are considered to be received for property used in the trade or business of a motor vehicle retail sales and service dealership, and

(2) to the extent such termination payment is reinvested in property used in a motor vehicle retail sales and service dealership located within the United States, such property shall qualify as like-kind replacement property to which section 1031 of the Internal Revenue Code of 1986 shall apply with the following modifications:

(A) Such section shall be applied without regard to subparagraphs (A) and (B)(ii) of subsection (a)(3).

(B) The period described in section 1031(a)(3)(B) of such Code shall be applied by substituting ''2 years'' for ''180 days''.

(b) RULES FOR ELECTION.—

(1) FORM OF ELECTION.—The taxpayer shall make an election under this section in such form and manner as the Secretary of the Treasury may prescribe and shall include in such election the amount of the termination payment received, the identification of the replacement property purchased, and such other information as the Secretary may prescribe.

(2) ELECTION ON AMENDED RETURN.—The Secretary of the Treasury shall permit an election under this section on an amended tax return for taxable years beginning before the date of the enactment of this Act.

(c) STATUTE OF LIMITATIONS.—Notwithstanding the provisions of any other law or rule of law, the statutory period for the assessment for any deficiency attributable to any termination payment gain shall be extended until 3 years after the date the Secretary of the Treasury is notified by the taxpayer of the like-kind replacement property or an intention not to replace.

(d) EFFECTIVE DATE.—This section shall apply to amounts received after December 12, 2000, in taxable years ending after such date.

SEC. 651. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) RENEWAL COMMUNITIES.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

''(g) EXPANSION OF DESIGNATED AREAS.—

''(1) EXPANSION BASED ON 2000 CENSUS.—At the request of the nominating entity with respect to a renewal community, the Secretary of Housing and Urban Development may expand the area of a renewal community to include any census tract—

''(A) which, at the time such community was nominated, met the requirements of this section for inclusion in such community but for the failure of such tract to meet 1 or more of the population and poverty rate requirements of this section using 1990 census data, and

''(B) which meets all failed population and poverty rate requirements of this section using 2000 census data.

''(2) EXPANSION TO CERTAIN AREAS WHICH DO NOT MEET POPULATION REQUIREMENTS.—

''(A) IN GENERAL.—At the request of 1 or more local governments and the State or States in which an area described in subparagraph (B) is located, the Secretary of Housing and Urban Development may expand a designated area to include such area.

''(B) AREA.—An area is described in this subparagraph if—

''(i) the area is adjacent to at least 1 other area designated as a renewal community,

''(ii) the area has a population less than the population required under subsection (c)(2)(C), and

''(iii)(I) the area meets the requirements of subparagraphs (A) and (B) of subsection (c)(2) and subparagraph (A) of subsection (c)(3), or

''(II) the area contains a population of less than 100 people.

''(3) APPLICABILITY.—Any expansion of a renewal community under this section shall take effect as provided in subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS FOR PURPOSES OF DETERMINING WHETHER HORSES ARE SECTION 1231 ASSETS.

(a) IN GENERAL.—Subparagraph (A) of section 1231(b)(3) (relating to definition of property used in the trade or business) is amended by striking ''and horses''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE TAX REFORM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the ''Blue Ribbon Commission on Comprehensive Tax Reform'' (in this section referred to as the ''Commission'').

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 17 members of whom—

(i) 3 shall be appointed by the majority leader of the Senate;

(ii) 3 shall be appointed by the minority leader of the Senate;

(iii) 3 shall be appointed by the Speaker of the House of Representatives;

(iv) 3 shall be appointed by the minority leader of the House of Representatives; and

(v) 5 shall be appointed by the President, of which no more than 3 shall be of the same party as the President.

(B) FEDERAL EMPLOYEES.—The members of the Commission may be employees or former employees of the Federal Government.

(C) DATE.—The appointments of the members of the Commission shall be made not later than October 30, 2004.

(3) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(5) MEETINGS.—The Commission shall meet at the call of the Chairman.

(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRMAN AND VICE CHAIRMAN.—The President shall select a Chairman and Vice Chairman from among its members.

(b) DUTIES OF THE COMMISSION.—

(1) STUDY.—The Commission shall conduct a thorough study of all matters relating to a comprehensive reform of the Federal tax system, including the reform of the Internal Revenue Code of 1986 and the implementation (if appropriate) of other types of tax systems.

(2) RECOMMENDATIONS.—The Commission shall develop recommendations on how to comprehensively reform the Federal tax system in a

manner that generates appropriate revenue for the Federal Government.

(3) REPORT.—Not later than 18 months after the date on which all initial members of the commission have been appointed pursuant to subsection (a)(2), the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(c) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Commission 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 Commission.

(3) STAFF.—

(A) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(e) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits its report under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to the Commission to carry out this section.

SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH RESPECT TO S CORPORATION STOCK.

(a) IN GENERAL.—Section 4975(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new flush sentences:

''A plan shall not be treated as violating the requirements of section 401, 409, or subsection (e)(7), or as engaging in a prohibited transaction for purposes of paragraph (3), merely by reason of any distribution described in section 1368(a) with respect to S corporation stock which constitutes qualifying employer securities if the distribution is, in accordance with the plan provisions, used to make payments on a loan described in paragraph (3) the proceeds of which were used to acquire the qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1998.

SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REASONABLY ANTICIPATED NEEDS OF A BUSINESS FOR PURPOSES OF ACCUMULATED EARNINGS TAX.

(a) IN GENERAL.—Section 537(b) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) WORKING CAPITAL.—The reasonably anticipated needs of a business for any taxable year shall include working capital for the business in an amount which is not less than the sum of the cost of goods, operating expenses, taxes, and interest expense which the business incurred during the preceding taxable year. Any amounts incurred as part of a plan a principal purpose of which is to increase the limitation under this subsection shall not be taken into account.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003, and before January 1, 2009.

SEC. 656. TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST.

(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation which is a real estate investment trust, which is a non-operating class III railroad, and substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons in railroad transportation, then, for purposes of section 115 of the Internal Revenue Code of 1986—

(1) income derived from such activities by the corporation shall be treated as accruing to the State, and

(2) such activities shall be treated as the exercise of an essential governmental function of the State to the extent such activities are of a type which are an essential government function (within the meaning of section 115 of such Code).

(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

(2) no change in basis of the property of such corporation shall occur,

because of any change of status of the corporation to a tax-exempt entity by reason of the application of subsection (a).

(c) TAX-EXEMPT FINANCING.—Any obligation issued by an entity described in subsection (a) shall be treated as an obligation of the State for purposes of applying section 103 and part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986.

(d) DEFINITIONS.—For purposes of this section—

(1) REAL ESTATE INVESTMENT TRUST.—The term ''real estate investment trust'' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

(2) NON-OPERATING CLASS III RAILROAD.—The term ''non-operating class III railroad'' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.) and the regulations thereunder.

(3) STATE.—The term ''State'' includes—

(A) the District of Columbia and any possession of the United States, and

(B) any authority, agency, or public corporation of a State.

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a).

(2) EXCEPTION.—This section shall not apply to any State which—

(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2005.

SEC. 657. CLARIFICATION OF CONTRIBUTION IN AID OF CONSTRUCTION FOR WATER AND SEWERAGE DISPOSAL UTILITIES.

(a) IN GENERAL.—Subparagraph (A) of section 118(c)(3) (relating to definitions) is amended to read as follows:

''(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term—

''(i) shall include amounts paid as customer connection fees (including amounts paid to connect the customer's water service line or sewer lateral line to the utility's distribution or collection system or extend a main water or sewer line to provide service to a customer), and

''(ii) shall not include amounts paid as service charges for starting or stopping services.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

SEC. 658. CREDIT FOR PURCHASE AND INSTALLATION OF AGRICULTURAL WATER CONSERVATION SYSTEMS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. PURCHASE AND INSTALLATION OF AGRICULTURAL WATER CONSERVATION SYSTEMS.

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the water conservation system expenses paid or incurred by the taxpayer during such year.

''(b) LIMITATIONS.—The credit allowed by subsection (a) with respect to any acre of land which is served by a water conservation system shall not exceed the excess of—

''(1) $500, over

''(2) the amount of credit allowed under this section with respect to such acre for all prior taxable years.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means any taxpayer if—

''(A) at least 50 percent of such taxpayer's gross income is normally derived from farm land, and

''(B) such taxpayer complies with all Federal, State, and local water rights and environmental laws.

''(2) WATER CONSERVATION SYSTEM EXPENSES.—

''(A) IN GENERAL.—The term 'water conservation system expenses' means expenses for the purchase and installation of a water conservation system but only if—

''(i) the land served by the water conservation system is entirely in a county or county-equivalent area which has received, in the taxable year the expenses were paid or incurred or in any of the 3 preceding taxable years, a primary-county designation due to drought by the Secretary of Agriculture, and

''(ii) such system is certified as saving at least 5 percent more irrigation water than the irrigation system which was used on such land immediately prior to the installation of such water conservation system.

For purposes of clause (ii), irrigation water savings shall be determined and certified under regulations prescribed jointly by the Natural Resources Conservation Service of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior. Such regulations shall include a list of individuals or organizations qualified to make such certification.

''(B) WATER CONSERVATION SYSTEM.—The term 'water conservation system' means, with respect to farm land—

''(i) new or replacement irrigation equipment and machinery, including sprinklers, pipes, siphons, nozzles, pumps, motors, and engines, and

''(ii) computer systems for irrigation and water management.

''(C) FARM LAND.—The term 'farm land' means land used in a trade or business by the taxpayer or a tenant of the taxpayer for—

''(i) the production of crops, fruits, or other agricultural products,

''(ii) the raising, harvesting, or growing of trees, or

''(iii) the sustenance of livestock.

''(d) YEAR EXPENDITURE MADE.—For purposes of this section, an expenditure with respect to a water conservation system shall be treated as made when the original installation of the system is completed.

''(e) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) LIABILITY FOR TAX.—The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year, reduced by the sum of the credits allowable under subpart A and the preceding sections of this subpart, over

''(B) the tentative minimum tax for the taxable year.

''(2) CARRYFORWARD OF UNUSED CREDIT.—If the amount of the credit allowable under subsection (a) for any taxable year exceeds the limitation under paragraph (1) for the taxable year, the excess shall be carried to the succeeding taxable year and added to the amount allowable as a credit under subsection (a) for such succeeding taxable year.

''(f) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter with respect to any expense which is taken into account in determining the credit under this section, and any increase in the basis of any property which would (but for this subsection) result from such expense shall be reduced by the amount of credit allowed under this section for such expense.

''(g) TERMINATION.—This section shall not apply to amounts paid or incurred with respect any water conservation system the installation of which is completed after December 31, 2006.''.

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016, as amended by this Act, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ''; and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 30B(f), in the case of amounts with respect to which a credit has been allowed under section 30B.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 30B. Purchase and installation of agricultural water conservation systems.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act with respect any water conservation system the installation of which is completed after December 31, 2004.

SEC. 659. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR BUSINESSES AFFECTED BY THE SEPTEMBER 11TH TERRORIST ATTACKS.

(a) IN GENERAL.—Subsection (g) of section 1400L is amended to read as follows:

''(g) MODIFICATION OF RULES APPLICABLE TO NONRECOGNITION OF GAIN.—In the case of property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone—

''(1) which was held by a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of section 1033(a)(2) with respect to such property to the extent such requirement is satisfied by another member of the group, and

''(2) notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting '5 years' for '2 years' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.''.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to involuntary conversions occurring on or after September 11, 2001.

SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RULES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking ''(C), or (F)'' in subparagraph (E) and inserting ''or (C)''.

(b) FULL EXCEPTION.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking ''made by a lender to a qualified continuing care facility pursuant to a continuing care contract'' in paragraph (1) and inserting ''owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and'',

(2) by striking ''increased personal care services or'' in paragraph (3)(C),

(3) by adding at the end of paragraph (3) the following new flush sentence:

''The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual's spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.'',

(4) by inserting ''independent living unit'' after ''all of the'' in paragraph (4)(A)(ii),

(5) by striking paragraphs (2) and (5),

(6) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(7) by striking ''CERTAIN'' in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 661. GOLD, SILVER, PLATINUM, AND PALLADIUM TREATED IN THE SAME MANNER AS STOCKS AND BONDS FOR MAXIMUM CAPITAL GAINS RATE FOR INDIVIDUALS.

(a) IN GENERAL.—Section 1(h)(5) (relating to definition of collectibles gain and loss) is amended—

(1) by striking ''(as defined in section 408(m) without regard to paragraph (3) thereof)'' in subparagraph (A) thereof, and

(2) by adding at the end the following new subparagraph:

''(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' has the meaning given such term by section 408(m), except that in applying paragraph (3)(B) thereof the determination of whether any bullion is excluded from treatment as a collectible shall be made without regard to the person who is in physical possession of the bullion.''

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 662. INCLUSION OF PRIMARY AND SECONDARY MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) OPTIONAL MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) by striking ''and'' at the end of paragraph (26);

(ii) by redesignating paragraph (27) as paragraph (28); and

(iii) by inserting after paragraph (26), the following:

''(27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and''; and

(B) by adding at the end the following:

''(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

''(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

''(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

''(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.''.

(2) RULE OF CONSTRUCTION.—Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act could not have treated, prior to the date of enactment of this Act, any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking ''plus'' at the end and inserting ''and''; and

(2) by adding at the end the following:

''(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

''(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

''(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease; plus''.

(c) DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—

(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(i) the coordination of service delivery for individuals with Sickle Cell Disease;

(ii) genetic counseling and testing;

(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(iv) training of health professionals; and

(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(B) GRANT AWARD REQUIREMENTS.—

(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

(3) NATIONAL COORDINATING CENTER.—

(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

(I) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(5) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Health Resources and Services Administration.

(B) ELIGIBLE ENTITY.—The term ''eligible entity'' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term ''Federally-qualified health center'' has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $10,000,000 for each of fiscal years 2005 through 2009.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.

Subtitle F—Revenue Provisions

PART I—GENERAL REVENUE PROVISIONS

SEC. 661A. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

Section 901, as amended by this Act, is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.''.

SEC. 662B. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EXCEPTION FOR LISTED AND REPORTABLE TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

PART II—PENSION AND DEFERRED COMPENSATION

SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

''SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.

''(a) RULES RELATING TO CONSTRUCTIVE RECEIPT.—

''(1) IN GENERAL.—

''(A) GROSS INCOME INCLUSION.—If at any time during a taxable year a nonqualified deferred compensation plan—

''(i) fails to meet the requirements of paragraphs (2), (3), (4), and (5), or

''(ii) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

''(B) INTEREST AND ADDITIONAL TAX PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

''(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year of inclusion shall be increased by the sum of—

''(I) the amount of interest determined under clause (ii), and

''(II) an amount equal to 10 percent of the compensation which is required to be included in gross income.

''(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for

any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(2) DISTRIBUTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

''(i) except as provided in subparagraph (B)(i), separation from service (as determined by the Secretary),

''(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

''(iii) death,

''(iv) a specified time (or pursuant to a fixed schedule) specified under the plan as of the date of the deferral of such compensation,

''(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

''(vi) the occurrence of an unforeseeable emergency.

''(B) SPECIAL RULES.—

''(i) SEPARATION FROM SERVICE OF SPECIFIED EMPLOYEES.—In the case of specified employees, the requirement of subparagraph (A)(i) is met only if distributions may not be made earlier than 6 months after the date of separation from service. For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i)) of a corporation the stock in which is publicly traded on an established securities market or otherwise.

''(ii) CHANGES IN OWNERSHIP OR CONTROL.—In the case of a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, the requirement of subparagraph (A)(v) is met only if distributions may not be made earlier than 1 year after the date of the change in ownership or effective control.

''(iii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

''(I) IN GENERAL.—The term 'unforeseeable emergency' means a severe financial hardship to the participant or beneficiary resulting from a sudden and unexpected illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152(a)), loss of the participant's or beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

''(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's or beneficiary's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

''(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

''(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

''(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

''(3) INVESTMENT OPTIONS.—The requirements of this paragraph are met if the plan provides that the investment options a participant may elect under the plan—

''(A) are comparable to the investment options which a participant may elect under the defined contribution plan of the employer which—

''(i) meets the requirement of section 401(a) and includes a trust exempt from taxation under section 501(a), and

''(ii) has the fewest investment options, or

''(B) if there is no such defined contribution plan, meet such requirements as the Secretary may prescribe (including requirements limiting such options to permissible investment options specified by the Secretary).

''(4) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided by the Secretary in regulations.

''(5) ELECTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

''(B) INITIAL DEFERRAL DECISION.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made during the preceding taxable year or at such other time as provided in regulations. In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

''(C) CHANGES IN TIME AND FORM OF DISTRIBUTION.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

''(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

''(ii) in the case an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

''(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

A plan shall be treated as failing to meet the requirements of this subparagraph if the plan permits more than 1 subsequent election to delay any payment.

''(b) RULES RELATING TO FUNDING.—

''(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, such assets shall be treated for purposes of section 83 as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

''(A) at the time set aside if such assets are located outside of the United States, or

''(B) at the time transferred if such assets are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

''(2) EMPLOYER'S FINANCIAL HEALTH.—In the case of a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 as of the earlier of—

''(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

''(B) the date on which assets are so restricted.

''(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

''(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

''(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

''(i) the amount of interest determined under subparagraph (B), and

''(ii) an amount equal to 10 percent of the amounts required to be included in gross income.

''(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

''(c) NO INFERENCE ON EARLIER INCOME INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

''(A) a qualified employer plan, and

''(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

''(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of an employer described in section 457(e)(1)(A).

''(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

''(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or

notional) attributable to such compensation or such income.

''(6) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—This section shall not apply to any nonelective deferred compensation to which section 457 does not apply by reason of section 457(e)(12), but only if such compensation is provided under a nonqualified deferred compensation plan which was in existence on May 1, 2004, and which was providing nonelective deferred compensation described in section 457(e)(12) on such date. If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amemdment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

''(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

''(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

''(4) defining financial health for purposes of subsection (b)(2), and

''(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.''.

(b) APPLICATION OF GOLDEN PARACHUTE PAYMENT PROVISIONS.—Section 280G of such Code (relating to golden parachute payments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM NONQUALIFIED DEFERRED COMPENSATION PLANS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, an applicable payment shall be treated as an excess parachute payment for purposes of this section and section 4999.

''(2) COORDINATION WITH OTHER PAYMENTS.—

''(A) APPLICABLE PAYMENTS WHICH ARE PARACHUTE PAYMENTS.—If any applicable payment is a parachute payment (determined without regard to subsection (b)(2)(A)(ii))—

''(i) except as provided in paragraph (4), this section shall be applied to such payment in the same manner as if this subsection had not been enacted, and

''(ii) if such application results in an excess parachute payment, any tax under section 4999 on the excess parachute payment shall be in addition to the tax imposed by reason of paragraph (1).

''(B) APPLICABLE PAYMENTS WHICH ARE NOT PARACHUTE PAYMENTS.—An applicable payment not described in subparagraph (A) shall be taken into account in determining whether any payment described in subparagraph (A) or any payment which is not an applicable payment is a parachute payment under subsection (b)(2).

''(3) APPLICABLE PAYMENT.—For purposes of this subsection, the term 'applicable payment' means any distribution (including any distribution treated as a parachute payment without regard to this subsection) from a nonqualified deferred compensation plan (as defined in section 409A(d)) which is made—

''(A) to a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, and

''(B) during the 1-year period following a change in the ownership or effective control of the corporation or in the ownership of a substantial portion of the assets of the corporation. Such terms shall not include any distribution by reason of the death of the participant or the participant becoming disabled (within the meaning of section 409A(a)(2)(C)).

''(4) NO DOUBLE COUNTING.—Under regulations, proper adjustments shall be made in the application of this subsection to prevent a deduction from being disallowed more than once.''.

(c) W–2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by inserting after paragraph (12) the following new paragraph:

''(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).''.

(2) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: ''In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.''.

(d) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 414(b) is amended by inserting ''409A,'' after ''408(p),''.

(2) Section 414(c) is amended by inserting ''409A,'' after ''408(p),''.

(3) The table of sections for such subpart A is amended by adding at the end the following new item:

''Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2004.

(2) EARNINGS ATTRIBUTABLE TO AMOUNT PREVIOUSLY DEFERRED.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

(f) GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(g) GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted on or before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), (4), and (5) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amending by adding at the end the following new subsection:

''(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer exchanges—

''(1) an option to purchase employer securities—

''(A) to which subsection (a) applies, or

''(B) which is described in subsection (e)(3), or

''(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term 'employer securities' includes any security issued by the employer.''.

(b) CONTROLLED GROUP RULES.—Section 414(t)(2) is amended by inserting ''83(i),'' after ''79,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any exchange after December 31, 2004.

SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCESS OF $1,000,000.

(a) IN GENERAL.—If an employer elects under Treasury Regulation 31.3402(g)–1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent (or the corresponding rate in effect under section 1(i)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) SPECIAL RULE FOR LARGE PAYMENTS.—

(1) IN GENERAL.—Notwithstanding subsection (a), if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2003.

SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) IN GENERAL.—Section 421 of the Internal Revenue Code of 1986 (relating to general rules for certain stock options) is amended by adding at the end the following new subsection:

''(d) CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—If—

''(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

''(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS ON BEHALF OF NONRESIDENT ALIENS.

(a) IN GENERAL.—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

''(w) APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF NONRESIDENT ALIENS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions.

''(2) APPLICABLE NONTAXABLE CONTRIBUTION.—For purposes of this subsection, the term 'applicable nontaxable contribution' means any employer or employee contribution—

''(A) which was made with respect to compensation for labor or personal services by an employee who, at the time the services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, but only if such compensation is treated as from sources without the United States, and

''(B) which was not subject to income tax under the laws of the United States or any foreign country.

''(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

TITLE VII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions

SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Section 9812(f) is amended—

(1) by striking ''and'' at the end of paragraph (1), and

(2) by striking paragraph (2) and inserting the following new paragraphs:

''(2) on or after January 1, 2004, and before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act, and

''(3) after December 31, 2005.''.

(b) ERISA.—Section 712(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(f)) is amended by striking ''on or after December 31, 2004'' and inserting ''after December 31, 2005''.

(c) PHSA.—Section 2705(f) of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking ''on or after December 31, 2004'' and inserting ''after December 31, 2005''.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to benefits for services furnished on or after December 31, 2003.

(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) shall apply to benefits for services furnished on or after December 31, 2004.

SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) PERMANENT EXTENSION OF CREDIT.—

(1) IN GENERAL.—Section 51(c) is amended by striking paragraph (4).

(2) LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

(A) IN GENERAL.—Section 51A is amended by striking subsection (f).

(B) CONFORMING AMENDMENTS.—

(i) The heading for section 51A is amended by striking ''**TEMPORARY**''.

(ii) The item relating to section 51A in the table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking ''Temporary incentives'' and inserting ''Incentives''.

(b) ELIGIBILITY OF EX-FELONS DETERMINED WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4) of section 51(d) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking all that follows subparagraph (B).

(c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF FOOD STAMP RECIPIENTS.—Clause (i) of section 51(d)(8)(A) is amended by striking ''25'' and inserting ''40''.

(d) INCREASE IN MAXIMUM AGE FOR DESIGNATED COMMUNITY RESIDENTS.—

(1) IN GENERAL.—Paragraph (5) of section 51(d) is amended to read as follows:

''(5) DESIGNATED COMMUNITY RESIDENTS.—

''(A) IN GENERAL.—The term 'designated community resident' means any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 40 on the hiring date, and

''(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

''(B) INDIVIDUAL MUST CONTINUE TO RESIDE IN ZONE OR COMMUNITY.—In the case of a designated community resident, the term 'qualified wages' shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, or renewal community.''

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 51(d)(1) is amended to read as follows:

''(D) a designated community resident,''.

(e) EFFECTIVE DATES.—

(1) EXTENSION OF CREDITS.—The amendments made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

(2) MODIFICATIONS.—The amendments made by subsections (b), (c), and (d) shall apply to individuals who begin work for the employer after December 31, 2004.

SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CREDIT WITH WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 51(d) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following new subparagraph:

''(I) a long-term family assistance recipient.''

(b) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—Subsection (d) of section 51 is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(10) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

''(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

''(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

''(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

''(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

''(ii) as having a hiring date which is not more than 2 years after the date of such cessation.''

(c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is amended by inserting after subsection (d) the following new subsection:

''(e) CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

''(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—

''(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

''(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

''(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means qualified wages—

''(A) which are paid to a long-term family assistance recipient, and

''(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

''(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

''(A) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

''(B) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'.''

(d) REPEAL OF SEPARATE WELFARE-TO-WORK CREDIT.—

(1) IN GENERAL.—Section 51A is hereby repealed.

(2) CLERICAL AMENDMENT.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2004.

SEC. 704. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''and 2003'' and inserting ''2003, 2004, and 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 2003.

SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2003.

SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF SCIENTIFIC PROPERTY AND COMPUTER TECHNOLOGY.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(1) IN GENERAL.—Clause (ii) of section 170(e)(4)(B) (defining qualified research contributions) is amended by inserting ''or assembled'' after ''constructed''.

(2) CONFORMING AMENDMENT.—Clause (iii) of section 170(e)(4)(B) is amended by inserting ''or assembling'' after ''construction''.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(1) IN GENERAL.—Clause (ii) of section 170(e)(6)(B) is amended by inserting ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

(2) SPECIAL RULE EXTENDED.—Section 170(e)(6)(G) is amended by striking ''2003'' and inserting ''2005''.

(3) CONFORMING AMENDMENTS.—Subparagraph (D) of section 170(e)(6) is amended by inserting ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2003.

SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking ''or 2003'' and inserting '', 2003, 2004, or 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003.

SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY ZONE BENEFITS.

(a) EXTENSION OF TAX-EXEMPT BOND FINANCING.—Subparagraph (D) of section 1400L(d)(2) is amended by striking ''2005'' and inserting ''2006''.

(b) CLARIFICATION OF BONDS ELIGIBLE FOR ADVANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to bonds described) is amended by striking '', or'' and inserting ''or the Municipal Assistance Corporation, or''.

(c) ELECTION OUT TECHNICAL AMENDMENT.—Subsection (c) of section 1400L is amended by adding at the end the following new paragraph:

''(5) ELECTION OUT.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(C)(iii) shall apply.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

SEC. 710. REPEAL OF REDUCTION OF DEDUCTIONS FOR MUTUAL LIFE INSURANCE COMPANIES.

(a) IN GENERAL.—Section 809 of the Internal Revenue Code of 1986 (relating to reductions in certain deduction of mutual life insurance companies) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsections (a)(2)(B) and (b)(1)(B) of section 807 of such Code are each amended by striking ''the sum of (i)'' and by striking ''plus (ii) any excess described in section 809(a)(2) for the taxable year,''.

(2)(A) The last sentence of section 807(d)(1) of such Code is amended by striking ''section 809(b)(4)(B)'' and inserting ''paragraph (6)''.

(B) Subsection (d) of section 807 of such Code is amended by adding at the end the following new paragraph:

''(6) STATUTORY RESERVES.—The term 'statutory reserves' means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).''

(3) Subsection (c) of section 808 of such Code is amended to read as follows:

''(c) AMOUNT OF DEDUCTION.—The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.''

(4) Subparagraph (A) of section 812(b)(3) of such Code is amended by striking ''sections 808 and 809'' and inserting ''section 808''.

(5) Subsection (c) of section 817 of such Code is amended by striking ''(other than section 809)''.

(6) Subsection (c) of section 842 of such Code is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 of such Code is amended by striking the item relating to section 809.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—Subsection (f) of section 1400 is amended by striking ''December 31, 2003'' both places it appears and inserting ''December 31, 2005''.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking ''January 1, 2004'' each place it appears and inserting ''January 1, 2006''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking ''December 31, 2008'' and inserting ''December 31, 2010'', and

(ii) by striking ''2008'' in the heading and inserting ''2010''.

(B) Section 1400B(g)(2) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(C) Section 1400F(d) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2004.

(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Paragraph (5) of section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

''(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR TAXABLE YEARS 2000 THROUGH 2004.—'', and

(2) by striking ''or 2003'' and inserting ''2003, or 2004''.

(b) CONFORMING PROVISIONS.—

(1) Section 904(i), as redesignated by this Act, is amended by striking ''or 2003'' and inserting ''2003, or 2004''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2003.

SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

Section 168(j)(8) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 718. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.

Section 6103(l)(13)(D) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended by striking ''Pension Funding Equity Act of 2004'' and inserting ''Jumpstart Our Business Strength (JOBS) Act''.

(b) MINIMUM COST REQUIREMENTS.—

(1) IN GENERAL.—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

''(ii) INSIGNIFICANT COST REDUCTIONS PERMITTED.—

''(I) IN GENERAL.—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

''(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.''.

(2) CONFORMING AMENDMENT.—Section 420(c)(3)(E) is amended by striking ''The Secretary'' and inserting:

''(i) IN GENERAL.—The Secretary''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) IN GENERAL.—Section 30(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENTS.—

(1) Section 53(d)(1)(B)(iii) is amended by striking ''section 30(b)(3)(B)'' and inserting ''section 30(b)(2)(B)''.

(2) Section 55(c)(2) is amended by striking ''30(b)(3)'' and inserting ''30(b)(2)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION FOR CLEAN-FUEL VEHICLE PROPERTY.

(a) IN GENERAL.—Paragraph (1) of section 179A(b) is amended to read as follows:

''(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

''(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

''(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

''(C) $50,000 in the case of—

''(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

''(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2003.

Subtitle B—Revenue Provisions

SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding at the end the following new paragraph:

''(11) CONTRIBUTIONS OF USED MOTOR VEHICLES, BOATS, AND AIRPLANES.—

''(A) IN GENERAL.—In the case of a contribution of a qualified vehicle in excess of $500—

''(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

''(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

''(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

''(i) The name and taxpayer identification number of the donor.

''(ii) The vehicle identification number or similar number.

''(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies and which is sold by the donee organization—

''(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

''(II) the gross proceeds from the sale, and

''(III) that the deductible amount may not exceed the amount of such gross proceeds.

''(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

''(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

''(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

''(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

''(i) the sale of the qualified vehicle, or

''(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

''(D) INFORMATION TO SECRETARY.—A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

''(E) QUALIFIED VEHICLE.—For purposes of this paragraph, the term 'qualified vehicle' means any—

''(i) self-propelled vehicle manufactured primarily for use on public streets, roads, and highways,

''(ii) boat, or

''(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

''(F) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph.''.

(b) PENALTY FOR FRAUDULENT ACKNOWLEDGMENTS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalities), as amended by section 882(c) of this Act, is amended adding at the end the following new section:

''SEC. 6720A. FRAUDULENT ACKNOWLEDGMENTS WITH RESPECT TO DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

''Any donee organization required under section 170(f)(11)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(11), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty equal to—

''(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(11)(A)(ii) applies, the greater of the value of the tax benefit to the donor or the gross proceeds from the sale of such vehicle, and

''(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(11) applies, the greater of the value of the tax benefit to the donor or $5,000.''.

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 882(c) of this Act, is amended by adding at the end the following new item:

''Sec. 6720A. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions after June 30, 2004.

SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 733. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new paragraph:

''(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

''(A) IN GENERAL.—In the case of a debt instrument which—

''(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

''(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed rate debt instrument which is convertible into stock.

''(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.''.

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

''For the treatment of contingent payment convertible debt, see section 1275(d)(2).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDERS.

(a) IN GENERAL.—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

''(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting '100 percent' for '15 percent' in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE VIII—ENERGY TAX INCENTIVES

SEC. 800. SHORT TITLE.

This title may be cited as the ''Energy Tax Incentives Act''.

Subtitle A—Renewable Electricity Production Tax Credit

SEC. 801. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

''(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified energy resources' means—

''(A) wind,

''(B) closed-loop biomass,

''(C) open-loop biomass,

''(D) geothermal energy,

''(E) solar energy,

''(F) small irrigation power,

''(G) biosolids and sludge, and

''(H) municipal solid waste.

''(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

''(3) OPEN-LOOP BIOMASS.—

''(A) IN GENERAL.—The term 'open-loop biomass' means—

''(i) any agricultural livestock waste nutrients, or

''(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

''(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush; but not including spent chemicals from pulp manufacturing,

''(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

''(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

''(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

''(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

''(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

''(C) EXCEPTIONS.—The term 'open-loop biomass' does not include—

''(i) closed-loop biomass, or

''(ii) biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

''(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

''(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the installed capacity of which is less than 5 megawatts.

''(6) BIOSOLIDS AND SLUDGE.—The term 'biosolids and sludge' means the residue or solids removed in the treatment of commercial, industrial, or municipal wastewater.

''(7) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).''.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) QUALIFIED FACILITIES.—For purposes of this section—

''(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

''(2) CLOSED-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

''(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

''(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

''(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

''(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than January 1, 2005,

''(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

''(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(3) OPEN-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity for grid sale in excess of its internal requirements, the term 'qualified facility' means any facility owned by the taxpayer which—

''(i) in the case of a facility using agricultural livestock waste nutrients, is originally placed in service after December 31, 2004, and before January 1, 2007, and

''(ii) in the case of any other facility, is originally placed in service before January 1, 2005.

''(B) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (A)(ii) which is placed in service before January 1, 2005—

''(i) subsection (a)(1) shall be applied by substituting '1.2 cents' for '1.5 cents', and

''(ii) the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

''(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007.

''(6) BIOSOLIDS AND SLUDGE FACILITY.—In the case of a facility using waste heat from the incineration of biosolids and sludge to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account for purposes of the energy credit under section 46.

''(7) MUNICIPAL SOLID WASTE FACILITY.—

''(A) IN GENERAL.—In the case of a facility or unit incinerating municipal solid waste to produce electricity, the term 'qualified facility' means any facility or unit owned by the taxpayer which is originally placed in service after December 31, 2004, and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.''.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

''(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—

(1) IN GENERAL.—Section 45(a) is amended by adding at the end the following new flush sentence:

''In the case of electricity produced after December 31, 2004, at any qualified facility originally placed in service after such date, paragraph (1) shall be applied by substituting '1.8 cents' for '1.5 cents'.''.

(2) NEW RATE NOT SUBJECT TO INFLATION ADJUSTMENT.—Section 45(b)(2) (relating to credit and phaseout adjustment based on inflation) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any amount which is substituted for the 1.5 cent amount in subsection (a) by reason of any provision of this section.''.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act)'' after ''project'' in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).'', and

(5) by striking ''TAX-EXEMPT BONDS,'' in the heading and inserting ''CERTAIN''.

(e) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing,

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(VI) the Tennessee Valley Authority.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subclause (I), (II), (III), (IV), or (V) of subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) USE BY TVA.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in subparagraph (A)(ii)(VI), any credit to which subparagraph (A)(i) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(ii) TREATMENT OF CREDITS.—The aggregate amount of credits described in subparagraph (A)(i) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(iii) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described subparagraph (A)(i) with respect to such person exceeds the aggregate amount of payment obligations described in clause (i), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this subparagraph.

''(E) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(F) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on December 31, 2004) placed in service on or before such date.

Subtitle B—Alternative Motor Vehicles and Fuels Incentives

SEC. 811. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30C. ALTERNATIVE MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

''(2) the new qualified hybrid motor vehicle credit determined under subsection (c), and

''(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d).

''(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

''(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

''(ii) In the case of a light truck:

"If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect

to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile, medium duty passenger vehicle, or light truck and which provides the following percentage of the maximum available power:

"If percentage of the maximum available power is:	The credit amount is:
At least 4 percent but less than 10 percent	$250
At least 10 percent but less than 20 percent	$500
At least 20 percent but less than 30 percent	$750
At least 30 percent	$1,000.

''(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

''(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

"If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$1,000
At least 30 percent but less than 40 percent	$1,750
At least 40 percent but less than 50 percent	$2,000
At least 50 percent but less than 60 percent	$2,250
At least 60 percent	$2,500.

''(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

"If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$4,000
At least 30 percent but less than 40 percent	$4,500
At least 40 percent but less than 50 percent	$5,000
At least 50 percent but less than 60 percent	$5,500
At least 60 percent	$6,000.

''(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

"If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	$6,000
At least 30 percent but less than 40 percent	$7,000
At least 40 percent but less than 50 percent	$8,000
At least 50 percent but less than 60 percent	$9,000
At least 60 percent	$10,000.

''(B) INCREASE FOR FUEL EFFICIENCY.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a new qualified hybrid motor vehicle which is a passenger automobile or light truck shall be increased by—

''(I) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2002 model year city fuel economy,

''(II) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(III) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(IV) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(V) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy, and

''(VI) $3,000, if such vehicle achieves at least 250 percent of the 2002 model year city fuel economy.

''(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increased credit amount determined in accordance with the following tables:

''(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

"If the model year is:	The increased credit amount is:
2004	$2,500
2005	$2,000
2006	$1,500.

''(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

"If the model year is:	The increased credit amount is:
2004	$6,500
2005	$5,250
2006	$4,000.

''(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

"If the model year is:	The increased credit amount is:
2004	$10,000
2005	$8,000
2006	$6,000.

''(D) DEFINITIONS RELATING TO CREDIT AMOUNT.—

''(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term 'applicable heavy duty hybrid motor vehicle' means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines, or for 2008 and later model year ottocycle heavy duty engines, as applicable.

''(ii) MAXIMUM AVAILABLE POWER.—

''(I) PASSENGER AUTOMOBILE, MEDIUM DUTY PASSENGER VEHICLE, OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

''(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. The term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

''(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified hybrid motor vehicle' means a motor vehicle—

''(i) which draws propulsion energy from onboard sources of stored energy which are both—

''(I) an internal combustion or heat engine using consumable fuel, and

''(II) a rechargeable energy storage system,

''(ii) which, in the case of a passenger automobile, medium duty passenger vehicle, or light truck—

''(I) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(II) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(iii) which, in the case of a heavy duty hybrid motor vehicle, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

''(iv) the original use of which commences with the taxpayer,

''(v) which is acquired for use or lease by the taxpayer and not for resale, and

''(vi) which is made by a manufacturer.

''(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

''(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term 'heavy duty hybrid motor vehicle' means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 8,500 pounds. Such term does not include a medium duty passenger vehicle.

''(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

''(A) 40 percent, plus

''(B) 30 percent, if such vehicle—

''(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

''(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act.

''(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new

qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

''(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

''(i) which is only capable of operating on an alternative fuel,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

''(iv) which is made by a manufacturer.

''(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

''(5) CREDIT FOR MIXED-FUEL VEHICLES.—

''(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

''(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

''(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

''(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

''(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

''(ii) either—

''(I) has received a certificate of conformity under the Clean Air Act, or

''(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

''(iii) the original use of which commences with the taxpayer,

''(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

''(v) which is made by a manufacturer.

''(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

''(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(3) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'medium duty passenger vehicle', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (e)).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

''(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

''(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before January 1, 2005.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(11) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(g) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(h) TERMINATION.—This section shall not apply to any property purchased after—

''(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

''(2) in the case of any other property, December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting '', and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 30C(f)(4).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30C(e),'' after ''30(b)(2),''.

(3) Section 6501(m) is amended by inserting ''30C(f)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Alternative motor vehicle credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 812. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Section 30(a) (relating to allowance of credit) is amended by striking ''10 percent of''.

(2) LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.—Paragraph (1) of section 30(b) (relating to limitations) is amended to read as follows:

''(1) LIMITATION ACCORDING TO TYPE OF VEHICLE.—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

''(A) In the case of a vehicle with a gross vehicle weight rating not exceeding 8,500 pounds—

''(i) except as provided in clause (ii) or (iii), $3,500,

''(ii) $6,000, if such vehicle is—

''(I) capable of a driving range of at least 100 miles on a single charge of the vehicle's rechargeable batteries as measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

''(II) capable of a payload capacity of at least 1,000 pounds, and

''(iii) if such vehicle is a low-speed vehicle which conforms to Standard 500 prescribed by

the Secretary of Transportation (49 C.F.R. 571.500), as in effect on the date of the enactment of the Energy Tax Incentives Act, the lesser of—

''(I) 10 percent of the manufacturer's suggested retail price of the vehicle, or

''(II) $1,500.

''(B) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 but not exceeding 14,000 pounds, $10,000.

''(C) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 but not exceeding 26,000 pounds, $20,000.

''(D) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, $40,000.''.

(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

(1) IN GENERAL.—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

''(A) which is—

''(i) operated solely by use of a battery or battery pack, or

''(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,''.

(2) LEASED VEHICLES.—Section 30(c)(1)(C) is amended by inserting ''or lease'' after ''use''.

(3) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(2), and (c) of section 30 are each amended by inserting ''battery'' after ''qualified'' each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting ''BATTERY'' after ''QUALIFIED''.

(C) The heading of section 30 is amended by inserting ''**BATTERY**'' after ''**QUALIFIED**''.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting ''battery'' after ''qualified''.

(E) Section 179A(c)(3) is amended by inserting ''battery'' before ''electric''.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting ''BATTERY'' before ''ELECTRIC''.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before January 1, 2005.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 813. CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30D. CLEAN-FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified clean-fuel vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail clean-fuel vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential clean-fuel vehicle refueling property, shall not exceed $1,000.

''(c) YEAR CREDIT ALLOWED.—Notwithstanding subsection (a), no credit shall be allowed under subsection (a) with respect to any qualified clean-fuel vehicle refueling property before the taxable year in which the property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified clean-fuel vehicle refueling property' has the same meaning given such term by section 179A(d).

''(2) RESIDENTIAL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'residential clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'retail clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30C, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—

''(1) COORDINATION WITH OTHER DEDUCTIONS AND CREDITS.—Except as provided in paragraph (2), the amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(2) NO DEDUCTION ALLOWED UNDER SECTION 179A.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified clean-fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail clean-fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year, such excess shall be a credit carryforward to each of the 20 taxable years following such taxable year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—Subsection (f) of section 179A is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting '', and'', and by adding at the end the following new paragraph:

''(34) to the extent provided in section 30D(f).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30D(e),'' after ''30C(e),''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30C the following new item:

''Sec. 30D. Clean-fuel vehicle refueling property credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 814. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

''SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the alternative fuel retail sales credit for any taxable year is the applicable amount for each gasoline gallon equivalent of alternative fuel sold at retail by the taxpayer during such year as a fuel to propel any qualified motor vehicle.

''(b) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE AMOUNT.—The term 'applicable amount' means the amount determined in accordance with the following table:

"In the case of any taxable year ending in—	The applicable amount is—
2005 and 2006	50 cents.

''(2) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or any liquid at least 85 percent of the volume of which consists of methanol or ethanol.

''(3) GASOLINE GALLON EQUIVALENT.—The term 'gasoline gallon equivalent' means, with respect to any alternative fuel, the amount (determined by the Secretary) of such fuel having a Btu content of 114,000.

''(4) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means any motor vehicle (as defined in section 30(c)(2)) which meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled.

''(5) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any new qualified alternative fuel motor vehicle (as defined in section 30C(d)(4)) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(c) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2006.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting '', plus'', and by adding at the end the following new paragraph:

''(22) the alternative fuel retail sales credit determined under section 40A(a).''.

(c) LIMITATION ON CARRYBACK.—

(1) IN GENERAL.—Subsection (d) of section 39, as amended by this Act, is amended to read as follows:

''(d) TRANSITIONAL RULE.—No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) may be carried back to any taxable year before the first taxable year for which such specified credit is allowable.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to taxable years beginning after December 31, 2003.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40 the following new item:

''Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(e) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to fuel sold at retail after December 31, 2004, in taxable years ending after such date.

SEC. 815. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking ''30,000,000'' each place it appears and inserting ''60,000,000''.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking ''subpart D'' and inserting ''subpart D, other than section 40(a)(3),''.

(3) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

''SEC. 87. ALCOHOL FUEL CREDIT.

''Gross income includes an amount equal to the sum of—

''(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

''(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).''.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle C—Conservation and Energy Efficiency Provisions

SEC. 821. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualifying new home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a qualifying new home shall not exceed—

''(i) in the case of a 30-percent home, $1,000, and

''(ii) in the case of a 50-percent home, $2,000.

''(B) 30- OR 50-PERCENT HOME.—For purposes of subparagraph (A)—

''(i) 30-PERCENT HOME.—The term '30-percent home' means—

''(I) a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 30 percent less than the annual level of heating and cooling energy consumption of a qualifying new home constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment, or

''(II) in the case of a qualifying new home which is a manufactured home, a home which meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(ii) 50-PERCENT HOME.—The term '50-percent home' means a qualifying new home which would be described in clause (i)(I) if 50 percent were substituted for 30 percent.

''(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—The amount of the credit otherwise allowable for the taxable year with respect to a qualifying new home under clause (i) or (ii) of subparagraph (A) shall be reduced by the sum of the credits allowed under subsection (a) to any taxpayer with respect to the home for all preceding taxable years.

''(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to the rehabilitation credit (as determined under section 47(a)) or to the energy credit (as determined under section 48(a)), and

''(B) expenditures taken into account under section 25D, 47, or 48(a) shall not be taken into account under this section.

''(3) PROVIDER LIMITATION.—Any eligible contractor who directly or indirectly provides the guarantee of energy savings under a guarantee-based method of certification described in subsection (d)(1)(D) shall not be eligible to receive the credit allowed by this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

''(A) the person who constructed the qualifying new home, or

''(B) in the case of a qualifying new home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualifying new home, such term means the person designated as such by the owner of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any

energy efficient heating or cooling equipment or system which can, individually or in combination with other components, meet the requirements of this section.

''(3) QUALIFYING NEW HOME.—

''(A) IN GENERAL.—The term 'qualifying new home' means a dwelling—

''(i) located in the United States,

''(ii) the construction of which is substantially completed after December 31, 2004, and

''(iii) the first use of which after construction is as a principal residence (within the meaning of section 121).

''(B) MANUFACTURED HOME INCLUDED.—The term 'qualifying new home' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

''(5) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a qualifying new home when installed in or on such home,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be determined either by a component-based method, a performance-based method, or a guarantee-based method, or, in the case of a qualifying new home which is a manufactured home, by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) COMPONENT-BASED METHOD.—A component-based method is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages which are equivalent in energy performance to properties which qualify under subparagraph (C).

''(C) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—A performance-based method is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a new home—

''(I) heated by the same fuel type, and

''(II) constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(D) GUARANTEE-BASED METHOD.—

''(i) IN GENERAL.—A guarantee-based method is a method which guarantees in writing to the homeowner energy savings of either 30 percent or 50 percent over the 2000 International Energy Conservation Code for heating and cooling costs. The guarantee shall be provided for a minimum of 2 years and shall fully reimburse the homeowner any heating and cooling costs in excess of the guaranteed amount.

''(ii) COMPUTER SOFTWARE.—Computer software shall be selected by the provider to support the guarantee-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (b)(1)(B) shall be provided by—

''(A) in the case of a component-based method, a local building regulatory authority, a utility, or a home energy rating organization,

''(B) in the case of a performance-based method or a guarantee-based method, an individual recognized by an organization designated by the Secretary for such purposes, or

''(C) in the case of a qualifying new home which is a manufactured home, a manufactured home primary inspection agency.

''(3) FORM.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

''(i) in the case of a performance-based method, accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such qualifying new home, and

''(ii) in the case of a qualifying new home which is a manufactured home, accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) FORM PROVIDED TO BUYER.—A form documenting the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their rated energy efficiency performance shall be provided to the buyer of the qualifying new home. The form shall include labeled R-value for insulation products, NFRC-labeled U-factor and solar heat gain coefficient for windows, skylights, and doors, labeled annual fuel utilization efficiency (AFUE) ratings for furnaces and boilers, labeled heating seasonal performance factor (HSPF) ratings for electric heat pumps, and labeled seasonal energy efficiency ratio (SEER) ratings for air conditioners.

''(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based and guarantee-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(e) APPLICATION.—Subsection (a) shall apply to qualifying new homes the construction of which is substantially completed after December 31, 2004, and purchased during the period beginning on such date and ending on—

''(1) in the case of any 30-percent home, December 31, 2005, and

''(2) in the case of any 50-percent home, December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting '', plus'', and by adding at the end the following new paragraph:

''(23) the new energy efficient home credit determined under section 45K(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

''(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45K(a).''.

(d) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45K(a).''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45K. New energy efficient home credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to homes the construction of which is substantially completed after December 31, 2004.

SEC. 822. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45L. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of the amounts determined under paragraph (2) for qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(2) AMOUNT.—The amount determined under this paragraph for any category described in subsection (b)(2)(B) shall be the product of the applicable amount for appliances in the category and the eligible production for the category.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.42 MEF, or

''(ii) a refrigerator which consumes at least 10 percent less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001,

''(B) $100, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.50 MEF, or

''(ii) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator manufactured after 2006) less kilowatt hours per year than such energy conservation standards, and

''(C) $150, in the case of a refrigerator manufactured before 2007 which consumes at least 20 percent less kilowatt hours per year than such energy conservation standards.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2001, 2002, and 2003.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii),

''(iv) refrigerators described in paragraph (1)(B)(ii), and

''(v) refrigerators described in paragraph (1)(C).

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall not exceed $60,000,000, of which not more than $30,000,000 may be allowed with respect to the credit determined by using the applicable amount under subsection (b)(1)(A).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii), (B)(ii), or (C) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply—

''(1) with respect to refrigerators described in subsection (b)(1)(A)(ii) produced after December 31, 2005, and

''(2) with respect to all other qualified energy efficient appliances produced after December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) the energy efficient appliance credit determined under section 45L(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45L. Energy efficient appliance credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2004, in taxable years ending after such date.

SEC. 823. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

''(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

''(4) 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

''(5) the sum of the qualified Tier 2 energy efficient building property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for property described in paragraph (1), (2), or (5) of subsection (d),

''(B) $500 for each 0.5 kilowatt of capacity of property described in subsection (d)(4), and

''(C) for property described in subsection (d)(6)—

''(i) $150 for each electric heat pump water heater,

''(ii) $125 for each advanced natural gas, oil, propane furnace, or hot water boiler,

''(iii) $150 for each advanced natural gas, oil, or propane water heater,

''(iv) $50 for each natural gas, oil, or propane water heater,

''(v) $50 for an advanced main air circulating fan,

''(vi) $150 for each advanced combination space and water heating system,

''(vii) $50 for each combination space and water heating system, and

''(viii) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER) for property described in subsection (d)(6)(B)(viii)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an advanced natural gas, oil, propane furnace, or hot water boiler which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

''(iii) an advanced natural gas, oil, or propane water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure,

''(iv) a natural gas, oil, or propane water heater which has an energy factor of at least 0.65 but less than 0.80 in the standard Department of Energy test procedure,

''(v) an advanced main air circulating fan used in a new natural gas, propane, or oil-fired furnace, including main air circulating fans that use a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at half and full speed, as determined by the Secretary,

''(vi) an advanced combination space and water heating system which has a combined energy factor of at least 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure,

''(vii) a combination space and water heating system which has a combined energy factor of at least 0.65 but less than 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure, and

''(viii) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

''(7) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1), (2), (4), (5), or (6) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(8) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—The credit allowed under this section shall not apply to expenditures after December 31, 2007.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(i), as redesignated and amended by this Act, is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting '', and'', and by adding at the end the following new paragraph:

''(35) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential energy efficient property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after December 31, 2004, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2004.

SEC. 824. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Section 48(a) (relating to energy credit) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant which—

''(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(II) has an electricity-only generation efficiency greater than 30 percent.

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to $500 for each 0.5 kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—The term 'qualified fuel cell property' shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term 'qualified microturbine property' means a stationary microturbine power plant which—

''(I) has a capacity of less than 2,000 kilowatts, and

''(II) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

''(ii) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant' means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—The term 'qualified microturbine property' shall not include any property placed in service after December 31, 2006.''.

(c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in

service after December 31, 2004, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 825. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

"SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year in which a building is placed in service by a taxpayer, an amount equal to the energy efficient commercial building property expenditures made by such taxpayer with respect to the construction or reconstruction of such building for the taxable year or any preceding taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under subsection (a) shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building with respect to which the expenditures are made.

''(c) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'energy efficient commercial building property expenditures' means amounts paid or incurred for energy efficient property installed on or in connection with the construction or reconstruction of a building—

''(A) for which depreciation is allowable under section 167,

''(B) which is located in the United States, and

''(C) which is the type of structure to which the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America is applicable.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) ENERGY EFFICIENT PROPERTY.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'energy efficient property' means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which meets the minimum requirements of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America, using methods of calculation described in subparagraph (B) and certified by qualified individuals as provided under paragraph (5).

''(B) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power costs.

''(C) COMPUTER SOFTWARE.—

''(i) IN GENERAL.—Any calculation described in subparagraph (B) shall be prepared by qualified computer software.

''(ii) QUALIFIED COMPUTER SOFTWARE.—For purposes of this subparagraph, the term 'qualified computer software' means software—

''(I) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power costs as required by the Secretary,

''(II) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

''(III) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

''(3) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property expenditures made by a public entity with respect to the construction or reconstruction of a public building, the Secretary shall promulgate regulations under which the value of the deduction with respect to such expenditures which would be allowable to the public entity under this section (determined without regard to the tax-exempt status of such entity) may be allocated to the person primarily responsible for designing the energy efficient property. Such person shall be treated as the taxpayer for purposes of this section.

''(4) NOTICE TO OWNER.—Any qualified individual providing a certification under paragraph (5) shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (2)(C)(ii)(III).

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings by qualified individuals described in subparagraph (B). Such procedures shall be—

''(i) comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards, and

''(ii) fuel neutral such that the same energy efficiency measures allow a building to be eligible for the credit under this section regardless of whether such building uses a gas or oil furnace or boiler or an electric heat pump.

''(B) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes. The Secretary may qualify a home energy ratings organization, a local building regulatory authority, a State or local energy office, a utility, or any other organization which meets the requirements prescribed under this paragraph.

''(C) PROFICIENCY OF QUALIFIED INDIVIDUALS.—The Secretary shall consult with nonprofit organizations and State agencies with expertise in energy efficiency calculations and inspections to develop proficiency tests and training programs to qualify individuals to determine compliance.

''(d) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(e) INTERIM RULES FOR LIGHTING SYSTEMS.—Until such time as the Secretary issues final regulations under subsection (c)(2)(B) with respect to property which is part of a lighting system—

''(1) IN GENERAL.—The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

''(2) REDUCTION IN CREDIT IF REDUCTION LESS THAN 40 PERCENT.—

''(A) IN GENERAL.—If, with respect to the lighting system of any building other than a warehouse, the reduction of lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of credit otherwise allowable under this section with respect to such property shall be allowed.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

''(i) 50, and

''(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

''(C) EXCEPTIONS.—This subsection shall not apply to any system—

''(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

''(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

''(f) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(g) TERMINATION.—This section shall not apply with respect to any energy efficient commercial building property expenditures in connection with a building the construction of which is not completed on or before December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting '', and'', and by adding at the end the following new paragraph:

''(36) to the extent provided in section 179B(d).''.

(2) Section 1245(a) is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 826. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(17) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (A)(iii) the following:

''(A)(iv) ..... 20''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 827. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) any qualified water submetering device.''.

(b) DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(16) QUALIFIED WATER SUBMETERING DEVICE.—

''(A) IN GENERAL.—The term 'qualified water submetering device' means any water submetering device which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier with respect to the unit for which the device is placed in service.

''(B) WATER SUBMETERING DEVICE.—For purposes of this paragraph, the term 'water submetering device' means any submetering device which is used by the taxpayer—

''(i) to measure and record water usage data, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.

''(C) ELIGIBLE RESUPPLIER.—For purposes of subparagraph (A), the term 'eligible resupplier' means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B), as amended by this Act, is amended by inserting after the item relating to subparagraph (A)(iv) the following:

''(A)(v) ..... 20''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 828. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property), as amended by this Act, is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48 (relating to energy credit; reforestation credit), as amended by this Act, is amended by adding at the end the following new subsection:

''(d) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of subsection (a)(3)(A)(iv)—

''(1) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(A) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(B) which has an electrical capacity of not more than 15 megawatts or a mechanical energy capacity of not more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(C) which produces—

''(i) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

''(ii) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(D) the energy efficiency percentage of which exceeds 60 percent, and

''(E) which is placed in service before January 1, 2007.

''(2) SPECIAL RULES.—

''(A) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this subsection, the energy efficiency percentage of a system is the fraction—

''(i) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(ii) the denominator of which is the lower heating value of the fuel sources for the system.

''(B) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under paragraph (1)(C) shall be determined on a Btu basis.

''(C) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(D) PUBLIC UTILITY PROPERTY.—

''(i) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under subsection (a) if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(ii) CERTAIN EXCEPTION NOT TO APPLY.—The matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to combined heat and power system property.

''(3) SYSTEMS USING BAGASSE.—If a system is designed to use bagasse for at least 90 percent of the energy source—

''(A) paragraph (1)(D) shall not apply, but

''(B) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this paragraph) as the energy efficiency percentage of such system bears to 60 percent.''.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to periods after December 31, 2004, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 829. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

''SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

''(b) LIMITATION.—The credit allowed by this section with respect to a dwelling for any taxable year shall not exceed $300, reduced (but not below zero) by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which is certified to meet or exceed the latest prescriptive criteria for such component in the International Energy Conservation Code approved by the Department of Energy before the installation of such component, or any combination of energy efficiency measures which are certified as achieving at least a 30 percent reduction in heating and cooling energy usage for the dwelling (as measured in terms of energy cost to the taxpayer), if—

''(1) such component or combination of measures is installed in or on a dwelling which—

''(A) is located in the United States,

''(B) has not been treated as a qualifying new home for purposes of any credit allowed under section 45K, and

''(C) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

''(2) the original use of such component or combination of measures commences with the taxpayer, and

''(3) such component or combination of measures reasonably can be expected to remain in use for at least 5 years.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) COMPONENT-BASED METHOD.—The certification described in subsection (d) for any component described in such subsection shall be determined on the basis of applicable energy efficiency ratings (including product labeling requirements) for affected building envelope components.

''(B) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—The certification described in subsection (d) for any combination of measures described in such subsection shall be—

''(I) determined by comparing the projected heating and cooling energy usage for the dwelling to such usage for such dwelling in its original condition, and

''(II) accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such dwelling.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (d) shall be provided by—

''(A) in the case of the method described in paragraph (1)(A), a third party, such as a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization, or

''(B) in the case of the method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which specify in readily inspectable fashion the energy efficient components and other measures

and their respective efficiency ratings, and which include a permanent label affixed to the electrical distribution panel of the dwelling.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for certification methods described in paragraph (1)(B), the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a dwelling to be eligible for the credit under this section regardless of whether such dwelling uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for the qualified energy efficiency improvements made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain or a dwelling when installed in or on such dwelling,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) TERMINATION.—Subsection (a) shall not apply to qualified energy efficiency improvements installed after December 31, 2006.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

(B) by adding at the end the following new paragraph:

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25D(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(2)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23 and 25C'' and inserting ''23, 25C, and 25D''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(G) Section 904(i), as redesignated and amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting ''; and'', and by adding at the end the following new paragraph:

''(37) to the extent provided in section 25D(g), in the case of amounts with respect to which a credit has been allowed under section 25D.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

''Sec. 25D. Energy efficiency improvements to existing homes.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after December 31, 2004, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2004.

Subtitle D—Clean Coal Incentives

PART I—CREDIT FOR EMISSION REDUCTIONS AND EFFICIENCY IMPROVEMENTS IN EXISTING COAL-BASED ELECTRICITY GENERATION FACILITIES

SEC. 831. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45M. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of clean coal technology production credit, multiplied by

''(2) the applicable percentage of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2005, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term 'qualifying clean coal technology unit' means a clean coal technology unit of the taxpayer which—

''(A) on January 1, 2005—

''(i) was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit, and

''(ii) had a nameplate capacity rating of not more than 300 megawatts,

''(B) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology during the 10-year period beginning on January 1, 2005,

''(C) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy, and

''(D) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e).

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term 'clean coal technology unit' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology, for the production of electricity,

''(B) uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity,

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A),

''(D) has a maximum design net heat rate of not more than 9,500, and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels, and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate × [1 − {((12,000-design coal heat content, Btu per pound)/1,000) × 0.013}],

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent, and

''(D) if carbon capture controls have been installed with respect to any qualifying unit and such controls remove at least 50 percent of the unit's carbon dioxide emissions, shall be adjusted up to the design heat rate level which would have resulted without the installation of such controls.

''(5) HHV.—The term 'HHV' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2003.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of this section, the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the megawatt capacity allocated to any unit under this subsection does not exceed 300 megawatts and the combined megawatt capacity allocated to all such units when all such units are placed in service during the 10-year period described in subsection (d)(1)(B), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and environmental performance, be placed in service as soon as possible, and

''(ii) to allocate capacity to taxpayers which have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units which become unlikely to meet the necessary conditions for qualifying can be reallocated by the Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting '', plus'', and by adding at the end the following new paragraph:

''(25) the qualifying clean coal technology production credit determined under section 45M(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45M. Credit for production from a qualifying clean coal technology unit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

PART II—INCENTIVES FOR EARLY COMMERCIAL APPLICATIONS OF ADVANCED CLEAN COAL TECHNOLOGIES

SEC. 832. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'qualifying advanced clean coal technology unit' means an advanced clean coal technology unit of the taxpayer—

''(A)(i) in the case of a unit first placed in service after December 31, 2004, the original use of which commences with the taxpayer, or

''(ii) in the case of the retrofitting or repowering of a unit first placed in service before January 1, 2005, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years,

such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term 'advanced clean coal technology unit' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after December 31, 2004, and before January 1, 2013, and

''(B) has a design net heat rate of not more than 8,500 (8,900 in the case of units placed in service before 2009).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible pressurized fluidized bed combustion technology unit' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after December 31, 2004, and before January 1, 2017, and

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term 'eligible integrated gasification combined cycle technology unit' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after December 31, 2004, and before January 1, 2017,

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013), and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2009, and 40.2 percent in the case of units placed in service after 2008 and before 2013).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term 'eligible other technology unit' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after December 31, 2004, and before January 1, 2017.

''(6) CARBON EMISSION RATE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting '0.51' and '0.459' for '0.60' and '0.54', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45M shall have the meaning given such term in section 45M.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts (not more than 500 megawatts in the case of units placed in service before 2009),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 1,000 megawatts in the case of units placed in service before 2009), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45N,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts,

''(C) to provide a certification process described in section 45M(e)(3)(C),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45M(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of this subsection, the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

''(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term 'qualified investment' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(ii), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES.—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term 'progress expenditure property' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term 'qualified progress expenditures' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term 'qualified progress expenditures' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term 'self-constructed property' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term 'nonself-constructed property' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term 'construction' includes reconstruction and erection, and the term 'constructed' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For

purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following rules shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction the numerator of which is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and the denominator of which is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) is amended by striking ''and (2)'' and inserting '', (2), and (6)''.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2004, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 833. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45N. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was originally placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

''(b) APPLICABLE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(A) If the qualifying advanced clean coal technology unit is producing electricity only:

''(i) In the case of a unit originally placed in service before 2009, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,500	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090.

''(B) If the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(i) In the case of a unit originally placed in service before 2009, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent	$.0060	$.0038
Less than 40.2 but not less than 39 percent	$.0025	$.0010
Less than 39 but not less than 38.4 percent	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	$.0105	$.0090
Less than 43.9 but not less than 42 percent	$.0085	$.0068
Less than 42 but not less than 40.2 percent	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent	$.0140	$.0115
Less than 46.3 but not less than 44.2 percent	$.0120	$.0090.

''(2) SPECIAL RULE FOR UNITS QUALIFYING FOR GREATER APPLICABLE AMOUNT WHEN PLACED IN SERVICE.—If, at the time a qualifying advanced clean coal technology unit is placed in service, production from the unit would be entitled to a greater applicable amount if such unit had been placed in service at a later date, the applicable amount for such unit shall be such greater amount.

''(c) INFLATION ADJUSTMENT.—For calendar years after 2005, each dollar amount in subsection (b)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 45M or 48A shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting '', plus'', and by adding at the end the following new paragraph:

''(26) the qualifying advanced clean coal technology production credit determined under section 45N(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45N.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45N. Credit for production from a qualifying advanced clean coal technology unit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

PART III—TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT

SEC. 834. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45M, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSON NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDITS.—

''(A) IN GENERAL.—Any credit allowable under this section, section 45N, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

''(4) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, transfers among and between persons described in clauses (i), (ii), (iii), (iv), and (v) of paragraph (1)(B) shall be treated as transfers between unrelated parties.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production after December 31, 2004, in taxable years ending after such date.

Subtitle E—Oil and Gas Provisions

SEC. 841. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45O. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

''(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2004.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or domestic natural gas which is produced from a qualified marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—Production from any well during any period in which such well is not in compliance with applicable Federal pollution prevention, control, and permit requirements shall not be treated as qualified crude oil production or qualified natural gas production.

''(4) DEFINITIONS.—

''(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

''(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

''(ii) which, during the taxable year—

''(I) has average daily production of not more than 25 barrel equivalents, and

''(II) produces water at a rate not less than 95 percent of total well effluent.

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(D) DOMESTIC NATURAL GAS.—The term 'domestic natural gas' does not include Alaska natural gas (as defined in section 45Q(c)(1)).

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than 1 owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting '', plus'', and by adding at the end the following new paragraph:

''(27) the marginal oil and gas well production credit determined under section 45O(a).''.

(c) COORDINATION WITH SECTION 29.—Section 29(a) (relating to allowance of credit) is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45O. Credit for producing oil and gas from marginal wells.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2004.

SEC. 842. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

''(iii) any natural gas gathering line, and''.

(b) NATURAL GAS GATHERING LINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

''(A) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

''(i) a gas processing plant,

''(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

''(iii) an interconnection with an intrastate transmission pipeline, or

''(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer, or

''(B) any other pipe, equipment, or appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(i) the following new item:

''(C)(iii) ..... 14''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 843. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

''SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

''(a) TREATMENT AS EXPENSES.—A small business refiner (as defined in section 45I(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45I(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

''(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels. For purposes of calculating such average daily domestic refinery runs, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(c) BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(d) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ''; or'', and by adding at the end the following new subparagraph:

''(K) expenditures for which a deduction is allowed under section 179C.''.

(2) Section 263A(c)(3) is amended by inserting ''179C,'' after ''section''.

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179B'' each place it appears in the heading and text and inserting ''179B, or 179C''.

(4) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting '', and'', and by adding at the end the following new paragraph:

''(38) to the extent provided in section 179C(c).''

(5) Paragraphs (2)(C) and (3)(C) of section 1245(a), as amended by this Act, are each amended by inserting ''179C,'' after ''179B,''.

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

''Sec. 179C. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 844. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45P. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

''(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

''(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

''(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

''(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels. For purposes of calculating such average daily domestic refinery runs, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

''(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

''(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

For purposes of calculating such average daily domestic refinery run or retained production, only refineries of the refiner or a related person (within the meaning of section 613A(d)(3)) on April 1, 2003, shall be taken into account.

''(2) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

''(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

''(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

''(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

''(6) SPECIAL RULE FOR DETERMINATION OF REFINERY RUNS.—Refinery runs shall be determined under rules similar to the rules under section 613A(d)(4).

''(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

''(e) CERTIFICATION.—

''(1) REQUIRED.—No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

''(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

''(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

''(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

''(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

''(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(f) COOPERATIVE ORGANIZATIONS.—

''(1) APPORTIONMENT OF CREDIT.—

''(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

''(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

''(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

''(3) SPECIAL RULE.—If for any reason the tax imposed with respect to any patron of a cooperative organization would, but for this paragraph, be increased by any amount by reason of a credit apportioned to such patron under this subsection—

''(A) the amount of such increase in tax shall not be imposed on such patron, and

''(B) the tax imposed by this chapter on such organization shall be increased by such amount. The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (26), by striking the period at the end of paragraph (27) and inserting '', plus'', and by adding at the end the following new paragraph:

''(28) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45P(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding after subsection (d) the following new subsection:

''(e) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45P(a).''.

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis), as amended by this Act, is amended by striking ''and'' at the end of paragraph (37), by striking the period at the end of paragraph (38) and inserting '', and'', and by adding at the end the following new paragraph:

''(39) in the case of a facility with respect to which a credit was allowed under section 45P, to the extent provided in section 45P(d).''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45P. Credit for production of low sulfur diesel fuel.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 845. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to limitations on application of subsection (c)) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 60,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2004.

SEC. 846. MARGINAL PRODUCTION INCOME LIMIT EXTENSION.

Section 613A(c)(6)(H) (relating to temporary suspension of taxable income limit with respect to marginal production), as amended by this Act, is amended by striking ''2005'' and inserting ''2007''.

SEC. 847. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

''(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

''(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

''(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

''(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2004.

SEC. 848. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

''(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

''(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.''.

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) is amended by inserting ''167(h), 167(i),'' after ''under section''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

SEC. 849. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

''(h) EXTENSION FOR OTHER FACILITIES.—

''(1) OIL AND GAS.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after December 31, 2004, and before January 1, 2007, notwithstanding subsection (f), this section shall apply with respect to such fuels produced at such well or facility before the close of the 3-year period beginning on the date that such well is drilled or such facility is placed in service.

''(2) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

''(A) IN GENERAL.—In the case of a facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after December 31, 2004, and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 3-year period beginning on the date such facility is placed in service.

''(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

''(3) WELLS PRODUCING VISCOUS OIL.—

''(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after December 31, 2004, and before January 1, 2007, this section shall apply with respect to fuel produced at such well before the close of the 3-year period beginning on the date such well is placed in service.

''(B) VISCOUS OIL.—The term 'viscous oil' means heavy oil, as defined in section 613A(c)(6), except that—

''(i) '22 degrees' shall be substituted for '20 degrees' in applying subparagraph (F) thereof, and

''(ii) in all cases, the oil gravity shall be measured from the initial well-head samples, drill cuttings, or down hole samples.

''(C) WAIVER OF UNRELATED PERSON REQUIREMENT.—In the case of viscous oil, the requirement under subsection (a)(2)(A) of a sale to an unrelated person shall not apply to any sale to the extent that the viscous oil is not consumed in the immediate vicinity of the wellhead.

''(4) FACILITIES PRODUCING REFINED COAL.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which was placed in service after December 31, 2004, and before January 1, 2007, this

section shall apply with respect to fuel produced at such facility before the close of the 5-year period beginning on the date such facility is placed in service.

''(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

''(C) COVERED FACILITIES.—

''(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which results in—

''(I) a qualified emission reduction, and

''(II) a qualified enhanced value.

''(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2004.

''(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

''(iv) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNITS EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology unit (as defined in section 48A(b)).

''(5) COALMINE GAS.—

''(A) IN GENERAL.—This section shall apply to coalmine gas—

''(i) captured or extracted by the taxpayer during the period beginning after December 31, 2004, and ending before January 1, 2007, and

''(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person during such period.

''(B) COALMINE GAS.—For purposes of this paragraph, the term 'coalmine gas' means any methane gas which is—

''(i) liberated during or as a result of coal mining operations, or

''(ii) extracted up to 10 years in advance of coal mining operations as part of a specific plan to mine a coal deposit.

''(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine gas which is captured in advance of coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed.

''(D) NONCOMPLIANCE WITH POLLUTION LAWS.—This paragraph shall not apply to the capture or extraction of coalmine gas from coal mining operations with respect to any period in which such coal mining operations are not in compliance with applicable State and Federal pollution prevention, control, and permit requirements.

''(6) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

''(A) FUELS TREATED AS QUALIFIED FUELS.—Any fuel described in paragraph (2), (3), (4), or (5) shall be treated as a qualified fuel for purposes of this section.

''(B) DAILY LIMIT.—The amount of qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1) sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

''(C) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT AND NEW PHASEOUT ADJUSTMENT.—For purposes of applying subsection (b)(2), in the case of fuels sold after 2003—

''(i) paragraphs (1)(A) and (2) of subsection (b) shall be applied by subtituting '$35.00' for '$23.50', and

''(ii) subparagraph (B) of subsection (d)(2) shall be applied by substituting '2002' for '1979' in determining such dollar amounts.''.

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—

(1) EXTENSION.—Section 29(f)(2) (relating to application of section) is amended by inserting ''(January 1, 2006, in the case of any coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(2) USE OF CREDIT AS AN OFFSET.—Section 29, as amended by subsection (a), is amended by adding the end the following new subsection:

''(i) USE OF CREDIT AS AN OFFSET.—

''(1) IN GENERAL.—Any credit allowable under subsection (a) with respect to any natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B) of subsection (f) owned by a person described in section 1381(a)(2)(C) or subsidiaries of such person may be used as provided in paragraph (2).

''(2) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1), any credit to which paragraph (1) applies may be applied by such person—

''(A) to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003, and

''(B) to the extent provided by the Secretary of Energy, as a prepayment not to exceed 50 percent of any obligation the person has incurred pursuant to an asset purchase agreement entered into with the Secretary and dated October 7, 1988.

''(3) CREDIT NOT INCOME.—Any use under paragraph (2) of any credit to which paragraph (1) applies shall not be treated as income for purposes of this title.

''(4) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(A), sales of qualified fuels among and between persons described in paragraph (1) shall be treated as sales between unrelated parties.''.

(c) TREATMENT AS BUSINESS CREDIT.—

(1) CREDIT MOVED TO SUBPART RELATING TO BUSINESS RELATED CREDITS.—The Internal Revenue Code of 1986, as amended by this Act, is amended by redesignating section 29, as amended by this Act, as section 45R and by moving section 45R (as so redesignated) from subpart B of part IV of subchapter A of chapter 1 to the end of subpart D of part IV of subchapter A of chapter 1.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', plus'', and by adding at the end the following:

''(31) the nonconventional source production credit determined under section 45R(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 30(b)(2)(A), as redesignated by this Act, is amended by striking ''sections 27 and 29'' and inserting ''section 27''.

(B) Sections 43(b)(2) and 613A(c)(6)(C) are each amended by striking ''section 29(d)(2)(C)'' and inserting ''section 45R(d)(2)(C)''.

(C) Section 45R(a), as redesignated by paragraph (1), is amended by striking ''At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' and inserting ''For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is''.

(D) Section 45R(b), as so redesignated, is amended by striking paragraph (6).

(E) Section 53(d)(1)(B)(iii) is amended by striking ''under section 29'' and all that follows through ''or not allowed''.

(F) Section 55(c)(2) is amended by striking ''29(b)(6),''.

(G) Subsection (a) of section 772, as amended by this Act, is amended by striking paragraph (10) and by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively.

(H) Paragraph (5) of section 772(d) is amended by striking ''the foreign tax credit, and the credit allowable under section 29'' and inserting ''and the foreign tax credit''.

(I) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 29.

(J) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45Q the following new item:

''Sec. 45R. Credit for producing fuel from a nonconventional source.''.

(d) STUDY OF COALBED METHANE.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study regarding the effect of section 45R of the Internal Revenue Code of 1986 on the production of coalbed methane.

(2) CONTENTS OF STUDY.—The study under paragraph (1) shall estimate the total amount of credits under section 45R of the Internal Revenue Code of 1986 claimed annually and in the aggregate which are related to the production of coalbed methane since the date of the enactment of such section 45R. Such study shall report the annual value of such credits allowable for coalbed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). Such study shall also estimate the incremental increase in production of coalbed methane which has resulted from the enactment of such section 45R, and the cost to the Federal Government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coalbed methane produced annually and in the aggregate since such enactment.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel sold after December 31, 2004, in taxable years ending after such date.

(2) EXISTING FACILITIES.—The amendments made by subsection (b) shall apply to fuel sold after December 31, 2002, in taxable years ending after such date.

(3) TREATMENT AS BUSINESS CREDIT.—The amendments made by subsection (c) shall apply to taxable years ending after December 31, 2003.

SEC. 850. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(E) (defining 15-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by adding after the item relating to subparagraph (E)(iii) the following new item:

''(E)(v) ..... 35''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, in taxable years ending after such date.

SEC. 851. CREDIT FOR ALASKA NATURAL GAS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45Q. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) Alaska natural gas the production of which is attributable to the taxpayer.

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount is $0.52 per 1,000,000 Btu of Alaska natural gas.

''(2) REDUCTION AS GAS PRICES INCREASE.—

''(A) IN GENERAL.—The dollar amount under paragraph (1) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $0.83, bears to

''(ii) $0.52.

''(B) APPLICABLE REFERENCE PRICE.—For purposes of this paragraph—

''(i) IN GENERAL.—The applicable reference price for any calendar month in a taxable year is the reference price for the calendar month in which production occurs.

''(ii) REFERENCE PRICE.—The term 'reference price' means, with respect to any calendar month, a published market price for natural gas in United States dollars per 1,000,000 Btu (reduced by any gas transportation costs and gas processing costs as determined by the appropriate national regulatory body for natural gas transportation) as determined under regulations by the Secretary.

''(C) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in paragraph (1) and subparagraph (A) of this paragraph shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2004.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(c) ALASKA NATURAL GAS.—For purposes of this section—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(19) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—

''(A) IN GENERAL.—In the case of a well in which there is more than 1 person or entity—

''(i) entitled to production of Alaska natural gas, or

''(ii) at the election of such person or entity, entitled to the value of production as either an operating interest owner or a royalty interest owner,

the portion of such production attributable to such person or entity shall be determined on the basis of the ratio which the person's or entity's interest in the production or the value of production bears to the aggregate of the interests of all such persons or entities. Production otherwise attributable to a United States tax-exempt person or entity by reason of a royalty interest shall be attributable to such person or entity with respect to whom royalty-in-value production remains or to whom royalty-in-kind production is sold.

''(B) PARTNERSHIP PROPERTIES.—In the case of a partnership, for purposes of applying subparagraph (A), production shall be attributable to its partners based on each partner's distributive share of Alaska natural gas which is produced from partnership properties and attributable to the partnership or its partners under subparagraph (A).

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas during the period—

''(1) beginning with the later of—

''(A) January 1, 2010, or

''(B) the initial date for the interstate transportation of such Alaska natural gas, and

''(2) ending with the date which is 25 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', plus'', and by adding at the end the following new paragraph:

''(29) The Alaska natural gas credit determined under section 45Q(a).''.

(c) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(1) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ALASKA NATURAL GAS CREDIT.—

''(A) IN GENERAL.—In the case of the Alaska natural gas credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the Alaska natural gas credit).

''(B) ALASKA NATURAL GAS CREDIT.—For purposes of this subsection, the term 'Alaska natural gas credit' means the credit allowable under subsection (a) by reason of section 45Q(a).''.

(2) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, and subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, are each amended by inserting ''or the Alaska natural gas credit'' after ''specified credits''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45Q. Alaska natural gas.''.

SEC. 852. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) any Alaska natural gas pipeline, and''.

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) ALASKA NATURAL GAS PIPELINE.—The term 'Alaska natural gas pipeline' means the natural gas pipeline system located in the State of Alaska which—

''(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

''(B) is—

''(i) placed in service after December 31, 2012, or

''(ii) treated as placed in service on January 1, 2013, if the taxpayer who places such system in service before January 1, 2013, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by inserting after the item relating to subparagraph (C)(iii) the following new item:

''(C)(iv) ..... 22''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004.

SEC. 853. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

''(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

''(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

''(ii) prepares Alaska natural gas (as defined in section 45Q(c)(1)) for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

''(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

SEC. 854. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Section 148(b) (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

''(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

''(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

''(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by or for a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract for the utility during any year does not exceed the sum of—

''(i) the annual average amount during the testing period of natural gas purchased (other

than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

''(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

''(i) only if the electricity is generated by a utility owned by a governmental unit, and

''(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

''(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

''(i) NEW BUSINESS CUSTOMERS.—If—

''(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for use by a business at a property within the service area of such utility, and

''(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

''(ii) OVERALL LIMITATION.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

''(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

''(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

''(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

''(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

''(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

''(ii) APPLICABLE SHARE.—For purposes of clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

''(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

''(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas used to transport such natural gas to the utility.

''(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

''(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

''(i) any area throughout which such utility provided at all times during the testing period—

''(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

''(II) in the case of an electric utility, electricity distribution services,

''(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

''(iii) any area recognized as the service area of such utility under State or Federal law.''.

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Section 141(c)(2) (providing exceptions to the private loan financing test) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).''.

(c) CONFORMING AMENDMENT.—Section 141(d) is amended by adding at the end the following new paragraph:

''(7) EXCEPTION FOR QUALIFIED ELECTRIC AND NATURAL GAS SUPPLY CONTRACTS.—The term 'nongovernmental output property' shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).''.

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2004.

Subtitle F—Electric Utility Restructuring Provisions

SEC. 855. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

''(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

''(B) no amount shall be treated as distributed from such Fund, or be includable in gross income, by reason of such transfer.''.

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

''(f) TRANSFERS INTO QUALIFIED FUNDS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

''(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

''(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

''(C) TRANSFERS OF QUALIFIED FUNDS.—If—

''(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

''(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not the transferor. The preceding sentence shall not apply if the transferor is an entity exempt from tax under this chapter.

''(D) SPECIAL RULES.—

''(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

''(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.

''(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

''(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.''.

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:

''(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and''.

(d) TECHNICAL AMENDMENT.—Section 468A(e)(2) (relating to taxation of Fund) is amended—

(1) by striking ''rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''rate of 20 percent'',

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 856. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Section 501(c)(12)(C) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any open access transaction (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction,

''(iv) from any asset exchange or conversion transaction, or

''(v) from the prepayment of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act of 1936.''.

(2) DEFINITIONS AND SPECIAL RULES.—Section 501(c)(12) is amended by adding at the end the following new subparagraphs:

''(E) For purposes of subparagraph (C)(ii)—

''(i) The term 'open access transaction' means any transaction meeting the open access requirements of any of the following subclauses with respect to a mutual or cooperative electric company:

''(I) The provision or sale of electric transmission service or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or under a regional transmission organization agreement approved by FERC.

''(II) The provision or sale of electric energy distribution services or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the mutual or cooperative electric company (or its members).

''(III) The delivery or sale of electric energy generated by a generation facility meets the open access requirements of this subclause only if such facility is directly connected to distribution facilities owned by the mutual or cooperative electric company (or its members) which owns the generation facility, and such distribution facilities meet the open access requirements of subclause (II).

''(ii) Clause (i)(I) shall apply in the case of a voluntarily filed tariff only if the mutual or cooperative electric company files a report with FERC within 90 days after the date of the enactment of this subparagraph relating to whether or not such company will join a regional transmission organization.

''(iii) A mutual or cooperative electric company shall be treated as meeting the open access requirements of clause (i)(I) if a regional transmission organization controls the transmission facilities.

''(iv) References to FERC in this subparagraph shall be treated as including references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))) or references to the Rural Utilities Service with respect to any other facility not subject to FERC jurisdiction.

''(v) For purposes of this subparagraph—

''(I) The term 'transmission facility' means an electric output facility (other than a generation facility) which operates at an electric voltage of 69 kilovolts or greater. To the extent provided in regulations, such term includes any output facility which FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of the Energy Tax Incentives Act).

''(II) The term 'regional transmission organization' includes an independent system operator.

''(III) The term 'FERC' means the Federal Energy Regulatory Commission.

''(F) The term 'nuclear decommissioning transaction' means—

''(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

''(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

''(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

''(G) The term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

''(i) generating, transmitting, distributing, or selling electric energy, or

''(ii) producing, transmitting, distributing, or selling natural gas.''.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Section 501(c)(12), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

''(v) For purposes of clause (iv)(II), the term 'base year' means—

''(I) the calendar year preceding the start-up year, or

''(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

''(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

''(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes January 1, 2005, or, if later, at the election of the mutual or cooperative electric company—

''(I) the first year that such electric company offers nondiscriminatory open access, or

''(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

''(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

''(ix) In the case of a mutual or cooperative electric company, income from any open access transaction received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.''.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Section 512(b) (relating to modifications), as amended by this Act, is amended by adding at the end the following new paragraph:

''(20) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.''.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

''(c) CROSS REFERENCE.—

''For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 857. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year (determined without regard to this subsection),

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2008, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than January 1, 2008, or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after December 31, 2004.

Subtitle G—Volumetric Ethanol Excise Tax Credit

SEC. 860. SHORT TITLE.

This subtitle may be cited as the ''Volumetric Ethanol Excise Tax Credit (VEETC) Act of 2004''.

SEC. 861. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' means a mixture of alcohol and a taxable fuel which—

''(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

''(B) is used as a fuel by the taxpayer producing such mixture, or

''(C) is removed from the refinery by a person producing such mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(3) BIODIESEL MIXTURE.—For purposes of this section, the term 'biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

''(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

''(B) is used as a fuel by the taxpayer producing such mixture, or

''(C) is removed from the refinery by a person producing such mixture.

''(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

''(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

''(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

''(B) any person—

''(i) separates the alcohol or biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

''(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.''.

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by sections 871 and 880 of this Act, is amended by inserting ''and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4081''.

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking ''subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)'' and inserting ''section 4041(b)(2), section 6426, or section 6427(e)''.

(2) Paragraph (4) of section 40(d) is amended to read as follows:

''(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Section 4041 is amended by striking subsection (k).

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40A(d)(1)) or agri-biodiesel (as defined in section 40A(d)(2)) which is not in a mixture described in section 6426—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40A(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any biodiesel mixture (as defined in section 6426(c)(3)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2006.''.

(10) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by adding at the end of subparagraph (A) the following new flush sentence:

''In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).'',

(D) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(E) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(F) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.''.

(12) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(13) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(14) TARIFF SCHEDULE.—Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) are each amended in the effective period column by striking ''10/1/2007'' each place it appears and inserting ''1/1/2011''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) shall take effect on April 1, 2005.

(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) shall take effect on the date of the enactment of this Act.

(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than September 30, 2004.

SEC. 862. BIODIESEL INCOME TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

''(A) MIXTURES.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates the biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

''(B) BIODIESEL.—If—

''(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

''(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

''(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

''(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2006.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', plus'', and by adding at the end the following new paragraph:

''(30) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''**FUEL CREDIT**'' in the heading and inserting ''**AND BIODIESEL FUELS CREDITS**''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

(2) Section 196(c), as amended by this Act, is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by adding at the end the following new paragraph:

''(13) the biodiesel fuels credit determined under section 40B(a).''.

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after September 30, 2004, in taxable years ending after such date.

Subtitle H—Fuel Fraud Prevention

SEC. 870. SHORT TITLE.

This subtitle may be cited as the ''Fuel Fraud Prevention Act of 2004''.

PART I—AVIATION JET FUEL

SEC. 871. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.''.

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

''(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''.

(3) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

''(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.''.

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush

sentence: ''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(4) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: ''This subparagraph shall not apply to aviation-grade kerosene.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

(b) COMMERCIAL AVIATION.—Section 4083 is amended redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by section 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).''.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

''(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

''(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking ''subsection (l)(5)'' both places it appears and inserting ''paragraph (4)(B) or (5) of subsection (l)'', and

(B) by striking ''the preceding sentence'' and inserting ''subsection (l)(5)''.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

''(B) in the case of aviation-grade kerosene—

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Section 4041(m)(1) is amended to read as follows:

''(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel, the rate of the tax imposed by subsection (a)(2) shall be—

''(A) after September 30, 1997, and before September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

''(ii) in any other case, 11.3 cents per gallon, and

''(B) after September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

''(ii) in any other case, 4.3 cents per gallon.''.

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(G) Section 6416(b)(2) is amended by striking ''4091 or''.

(H) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(I) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(J) Section 6427 is amended by striking subsection (f).

(K) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(L)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any refund paid to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(M) Subparagraph (B) of section 6724(d)(1), as amended by this Act, is amended by striking clause (xvi) and by redesignating clauses (xvii), (xviii), and (xix) as clauses (xvi), (xvii), and (xviii), respectively.

(N) Paragraph (2) of section 6724(d), as amended by this Act, is amended by striking subparagraph (X) and by redesignating subparagraphs (Y), (Z), (AA), (BB), and (CC) as subparagraphs (X), (Y), (Z), (AA), and (BB), respectively.

(O) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(P) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(Q) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(R) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(S) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(T) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A—Motor and Aviation Fuels''.

(U) The heading for subpart B of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart B—Special Provisions Applicable to Fuels Tax''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 872. TRANSFER OF CERTAIN AMOUNTS FROM THE AIRPORT AND AIRWAY TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.

(a) IN GENERAL.—Section 9502(d) is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND TO THE HIGHWAY TRUST FUND.—

''(A) IN GENERAL.—The Secretary shall pay annually from the Airport and Airway Trust Fund into the Highway Trust Fund an amount (as determined by him) equivalent to amounts received in the Airport and Airway Trust Fund which are attributable to fuel that is used primarily for highway transportation purposes.

''(B) AMOUNTS TRANSFERRED TO MASS TRANSIT ACCOUNT.—The Secretary shall transfer 11 percent of the amounts paid into the Highway Trust Fund under subparagraph (A) to the Mass Transit Account established under section 9503(e).''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 9503 is amended—

(A) by striking ''appropriated or credited'' and inserting ''paid, appropriated, or credited'', and

(B) by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(2) Subsection (e)(1) of section 9503 is amended by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART II—DYED FUEL

SEC. 873. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''by mechanical injection'' after ''indelibly dyed''.

(b) DYE INJECTOR SECURITY.—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

''SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

''(a) IMPOSITION OF PENALTY.—

''(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such person shall pay a penalty in addition to the tax (if any).

''(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty.

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) for each violation described in paragraph (1), the greater of—

''(A) $25,000, or

''(B) $10 for each gallon of fuel involved, and

''(2) for each—

''(A) failure to maintain security standards described in paragraph (2), $1,000, and

''(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

''Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect 180 days after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 874. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) IN GENERAL.—Section 6715 is amended by inserting at the end the following new subsection:

''(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

''(1) fraud or mistake in the chemical analysis, or

''(2) mathematical calculation of the amount of the penalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 875. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) IN GENERAL.—Section 6715(a) (relating to dyed fuel sold for use or used in taxable use, etc.) is amended by striking ''or'' in paragraph (2), by inserting ''or'' at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

''(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel,''.

(b) CONFORMING AMENDMENT.—Section 6715(a)(3) is amended by striking ''alters, or attempts to alter,'' and inserting ''alters, chemically or otherwise, or attempts to so alter,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 876. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) IN GENERAL.—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

''(3) any use described in section 4041(a)(1)(C)(iii)(II).''.

(b) ULTIMATE VENDOR REFUND.—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

''(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—

''(A) IN GENERAL.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

''(B) CREDIT CARDS.—For purposes of this paragraph, if the sale of such fuel is made by means of a credit card, the person extending credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) PAYMENT OF REFUNDS.—Subparagraph (A) of section 6427(i)(4), as amended by this Act, is amended by inserting ''subsections (b)(4) and'' after ''filed under''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after September 30, 2004.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

SEC. 877. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by this Act, is amended by striking ''and'' at the end of clause (i) and by inserting after clause (ii) the following new clause:

''(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 878. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 6717. REFUSAL OF ENTRY.

''(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

''(b) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4083(d)(3), as amended by this Act, is amended—

(A) by striking ''ENTRY.—The penalty'' and inserting: ''ENTRY.—

''(A) FORFEITURE.—The penalty'', and

(B) by adding at the end the following new subparagraph:

''(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.''.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6717. Refusal of entry.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

SEC. 879. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting ''by pipeline or vessel'' after ''transferred in bulk'', and

(2) by inserting '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

(b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 6718. CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.

''(a) IMPOSITION OF PENALTY.—If any person knowingly transfers any taxable fuel (as defined in section 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to an unregistered, such person shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be an amount equal to the greater of—

''(A) $10,000, or

''(B) $1 per gallon.

''(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6718. Carrying taxable fuels by nonregistered pipelines or vessels.''.

(c) PUBLICATION OF REGISTERED PERSONS.—Not later than June 30, 2004, the Secretary of the Treasury shall publish a list of persons required to be registered under section 4101 of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

SEC. 880. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking ''Every'' and inserting the following:

''(1) IN GENERAL.—Every'', and

(2) by adding at the end the following new paragraph:

''(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.''.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VESSEL.

''(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

''(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6719. Failure to display registration of vessel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 881. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.

(a) IN GENERAL.—Section 4101(a), as amended by this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

''(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.—The Secretary shall require registration by any person which—

''(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

''(B) holds an inventory position with respect to a taxable fuel in such a terminal.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 882. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting ''($10,000 in the case of a failure to register under section 4101)'' after ''$50''.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking ''$5,000'' and inserting ''$10,000''.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 6720. FAILURE TO REGISTER.

''(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) $10,000 for each initial failure to register, and

''(2) $1,000 for each day thereafter such person fails to register.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 6720. Failure to register.''.

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

''SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

''(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

''(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

''(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

''(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6725. Failure to report information under section 4101.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to failures pending or occurring after September 30, 2004.

SEC. 883. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

''SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

''(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits—

''(1) under the provisions of section 34, 40, and 40B to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

''(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a monthly return (in such manner as the Secretary may prescribe).

''(b) CONTENTS OF RETURN.—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

''(c) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

''Sec. 4104. Information reporting for persons claiming certain tax benefits.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART V—IMPORTS

SEC. 884. TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—

(1) IN GENERAL.—Subpart C of part III of subchapter A of chapter 31, as amended by this Act, is amended by adding at the end the following new section:

''SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REGISTERED.

''(a) IN GENERAL.—Any tax imposed under this part on any person not registered under section 4101 for the entry of a fuel into the United States shall be imposed at the time and point of entry.

''(b) ENFORCEMENT OF ASSESSMENT.—If any person liable for any tax described under subsection (a) has not paid the tax or posted a bond, the Secretary may—

''(1) seize the fuel on which the tax is due, or

''(2) detain any vehicle transporting such fuel,

until such tax is paid or such bond is filed.

''(c) LEVY OF FUEL.—If no tax has been paid or no bond has been filed within 5 days from the date the Secretary seized fuel pursuant to subsection (b), the Secretary may sell such fuel as provided under section 6336.''.

(2) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 31 of the Internal Revenue Code of 1986, as amended by section 5245 of this Act, is amended by adding after the last item the following new item:

''Sec. 4105. Tax at entry where importer not registered.''.

(b) DENIAL OF ENTRY WHERE TAX NOT PAID.—The Secretary of Homeland Security is authorized to deny entry into the United States of any shipment of a fuel which is taxable under section 4081 of the Internal Revenue Code of 1986 if the person entering such shipment fails to pay the tax imposed under such section or post a bond in accordance with the provisions of section 4105 of such Code.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 885. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) IN GENERAL.—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end the following new paragraph:

''(4) IN GENERAL.—Subject to paragraphs (2) and (3), not later than 1 year after the enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, shall promulgate regulations providing for the transmission to the Internal Revenue Service, through an electronic data interchange system, of information pertaining to cargo of taxable fuels (as defined in section 4083 of the Internal Revenue Code of 1986) destined for importation into the United States prior to such importation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 886. TAX ON SALE OF DIESEL FUEL WHETHER SUITABLE FOR USE OR NOT IN A DIESEL-POWERED VEHICLE OR TRAIN.

(a) IN GENERAL.—Section 4083(a)(3) is amended—

(1) by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—The term'', and

(2) by inserting at the end the following new subparagraph:

''(B) LIQUID SOLD AS DIESEL FUEL.—The term 'diesel fuel' includes any liquid which is sold as or offered for sale as a fuel in a diesel-powered highway vehicle or a diesel-powered train.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 40B(b)(1)(B), as added by this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(2) Section 6426(c)(3), as added by this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 887. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

''(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

''(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 500 gallons (as determined under subsection (i)(5)(A)(iii)).

''(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

''(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

''(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

''(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

''(ii) which is not less than 1 week, and

''(iii) which is for not more than 500 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

''(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(B) The heading for section 6427(l)(5) is amended by striking ''FARMERS AND''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 888. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

''(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

''(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

''(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).''.

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel), as amended by this Act, is amended by adding at the end the following new sentence: ''For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 889. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding at the end the following new section:

''SEC. 4106. TWO-PARTY EXCHANGES.

''(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under of section 4081(a)(1)(A)(ii).

''(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

''(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

''(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

''(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

''(4) The transaction is the subject of a written contract.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by of this Act, is amended by adding after the last item the following new item:

''Sec. 4106. Two-party exchanges.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 890. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) NO PRORATION OF TAX UNLESS VEHICLE IS DESTROYED OR STOLEN.—

(1) IN GENERAL.—Section 4481(c) (relating to proration of tax) is amended to read as follows:

''(c) PRORATION OF TAX WHERE VEHICLE SOLD, DESTROYED, OR STOLEN.—

''(1) IN GENERAL.—If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

''(2) DESTROYED.—For purposes of paragraph (1), a highway motor vehicle is destroyed if such

vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(B) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2) of section 4481(d) (relating to one tax liability for period) is amended to read as follows:

''(2) DISPLAY OF TAX CERTIFICATE.—Under regulations by the Secretary, every taxpayer which pays the tax imposed under this section with respect to a highway motor vehicle shall, not later than 1 month after the due date of the return of tax with respect to each taxable period, receive and display on such vehicle an electronic identification device prescribed by the Secretary.''.

(c) ELECTRONIC FILING.—Section 4481, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.''.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

(2) REGULATIONS REGARDING DISPLAY OF TAX CERTIFICATE.—The Secretary of the Treasury shall issue regulations required under section 4481(d)(2) of the Internal Revenue Code of 1986 (as added by subsection (b)) not later than October 1, 2005.

SEC. 891. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties assessed under sections 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting ''AND PENALTIES'' after ''TAXES''.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking ''IN GENERAL'' and inserting ''CERTAIN TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 892. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: ''Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: ''Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting ''or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)'' after ''section 4101''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

PART VII—TOTAL ACCOUNTABILITY

SEC. 893. TOTAL ACCOUNTABILITY.

(a) TAXATION OF REPORTABLE LIQUIDS.—

(1) IN GENERAL.—Section 4081(a), as amended by this Act, is amended—

(A) by inserting ''or reportable liquid'' after ''taxable fuel'' each place it appears, and

(B) by inserting ''such liquid'' after ''such fuel'' in paragraph (1)(A)(iv).

(2) RATE OF TAX.—Subparagraph (A) of section 4081(a)(2), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) in the case of reportable liquids, the rate determined under section 4083(c)(2).''.

(3) EXEMPTION.—Section 4081(a)(1) is amended by adding at the end the following new subparagraph:

''(C) EXEMPTION FOR REGISTERED TRANSFERS OF REPORTABLE LIQUIDS.—The tax imposed by this paragraph shall not apply to any removal, entry, or sale of a reportable liquid if—

''(i) such removal, entry, or sale is to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or

''(ii) the sale is to the ultimate purchaser of such liquid.''.

(4) REPORTABLE LIQUIDS.—Section 4083, as amended by this Act, is amended by redesignating subsections (c) and (d) (as redesignated by this Act) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new section:

''(c) REPORTABLE LIQUID.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'reportable liquid' means any petroleum-based liquid other than a taxable fuel.

''(2) TAXATION.—

''(A) GASOLINE BLEND STOCKS AND ADDITIVES.—Gasoline blend stocks and additives which are reportable liquids (as defined in paragraph (1)) shall be subject to the rate of tax under clause (i) of section 4081(a)(2)(A).

''(B) OTHER REPORTABLE LIQUIDS.—Any reportable liquid (as defined in paragraph (1)) not described in subparagraph (A) shall be subject to the rate of tax under clause (iii) of section 4081(a)(2)(A).''.

(5) CONFORMING AMENDMENTS.—

(A) Section 4081(e) is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(B) Section 4083(d) (relating to certain use defined as removal), as redesignated by paragraph (4), is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(C) Section 4083(e)(1) (relating to administrative authority), as redesignated by paragraph (4), is amended—

(i) in subparagraph (A)—

(I) by inserting ''or reportable liquid'' after ''taxable fuel'', and

(II) by inserting ''or such liquid'' after ''such fuel'' each place it appears, and

(ii) in subparagraph (B), by inserting ''or any reportable liquid'' after ''any taxable fuel''.

(D) Section 4101(a)(2), as added by this Act, is amended by inserting ''or a reportable liquid'' after ''taxable fuel''.

(E) Section 4101(a)(3), as added and redesignated by this Act, is amended by inserting ''or any reportable liquid'' before the period at the end.

(F) Section 4102 is amended by inserting ''or any reportable liquid'' before the period at the end.

(G)(i) Section 6718, as added by this Act, is amended—

(I) in subsection (a), by inserting ''or any reportable liquid (as defined in section 4083(c)(1))'' after ''section 4083(a)(1))'', and

(II) in the heading, by inserting ''OR REPORTABLE LIQUIDS'' after ''TAXABLE FUEL''.

(ii) The item relating to section 6718 in table of sections for part I of subchapter B of chapter 68, as added by this Act, is amended by inserting ''or reportable liquids'' after ''taxable fuels''.

(H) Section 6427(h) is amended to read as follows:

''(h) GASOLINE BLEND STOCKS OR ADDITIVES AND REPORTABLE LIQUIDS.—Except as provided in subsection (k)—

''(1) if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, or

''(2) if any reportable liquid (within the meaning of section 4083(c)(1)) is not used by any person to produce a taxable fuel and such person establishes that the ultimate use of such reportable liquid is not to produce a taxable fuel,

then the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive or such reportable liquid.''.

(I) Section 7232, as amended by this Act, is amended by inserting ''or reportable liquid (within the meaning of section 4083(c)(1))'' after ''section 4083)''.

(J) Section 343 of the Trade Act of 2002, as amended by this Act, is amended by inserting ''and reportable liquids (as defined in section 4083(c)(1) of such Code)'' after ''Internal Revenue Code of 1986)''.

(b) DYED DIESEL.—Section 4082(a) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''and'', and by inserting after paragraph (3) the following new paragraph:

''(4) which is removed, entered, or sold by a person registered under section 4101.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to reportable liquids (as defined in section 4083(c) of the Internal Revenue Code) and fuel sold or used after September 30, 2004.

SEC. 894. EXCISE TAX REPORTING.

(a) IN GENERAL.—Part II of subchapter A of chapter 61 is amended by adding at the end the following new subpart:

''SUBPART E—EXCISE TAX REPORTING

''SEC. 6025. RETURNS RELATING TO FUEL TAXES.

''(a) IN GENERAL.—The Secretary shall require any person liable for the tax imposed under Part III of subchapter A of chapter 32 to file a return of such tax on a monthly basis. Not earlier than January 1, 2005, such filings shall be in electronic form as prescribed by the Secretary.

''(b) INFORMATION INCLUDED WITH RETURN.—The Secretary shall require any person filing a return under subsection (a) to provide information regarding any refined product (whether or not such product is taxable under this title) removed from a terminal during the period for which such return applies.''.

(b) CONFORMING AMENDMENT.—The table of parts for subchapter A of chapter 61 is amended by adding at the end the following new item:

''Subpart E—Excise Tax Reporting''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2004.

SEC. 895. INFORMATION REPORTING.

(a) IN GENERAL.—Section 4101(d) is amended by adding at the end the following new flush sentence:

''The Secretary shall require reporting under the previous sentence with respect to taxable

fuels removed, entered, or transferred from any refinery, pipeline, or vessel which is registered under this section. Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on October 1, 2004.

Subtitle I—Mobile Machinery

SEC. 896. TREATMENT OF MOBILE MACHINERY.

(a) TREATMENT OF MOBILE MACHINERY AS HIGHWAY VEHICLE.—

(1) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(48) TREATMENT OF MOBILE MACHINERY AS HIGHWAY VEHICLE.—

''(A) IN GENERAL.—A vehicle described in subparagraph (B) shall be treated as a highway vehicle.

''(B) MOBILE MACHINERY.—A vehicle is described in this subparagraph if such vehicle consists of a chassis—

''(i) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(ii) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(iii) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) ELIGIBILITY FOR REFUND IN CASE OF LIMITED USE OF VEHICLE ON HIGHWAYS.—

(1) RETAIL SALES AND TIRE TAXES.—

(A) IN GENERAL.—Section 6416(b) (relating to special cases in which tax payments considered overpayments) is amended by adding at the end the following new paragraph:

''(7) MOBILE MACHINERY.—

''(A) IN GENERAL.—If the tax imposed by section 4051 or 4071 has been paid with respect to any vehicle described in section 7701(a)(48)(B) which meets the use-based test for each of the first 2 12-month periods after such payment, 50 percent of such tax shall be considered an overpayment for each such period.

''(B) USE-BASED TEST.—For purposes of subparagraph (A), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during any 12-month period.

''(C) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of subparagraph (A), the use-based test shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the day after the date of the enactment of this Act.

(2) FUEL TAXES.—

(A) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

''(C) USES IN MOBILE MACHINERY.—

''(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle described in section 7701(a)(48)(B) which meets the use-based test.

''(ii) USE-BASED TEST.—For purposes of clause (i), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during the taxpayer's taxable year.

''(iii) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of clause (i), the use-based test shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway business use described in section 6421(e)(2)(C).''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after the date of the enactment of this Act.

(3) CONFORMING AMENDMENT FOR TAX-EXEMPT USERS WITH RESPECT TO USE TAX.—

(A) IN GENERAL.—Section 4483(d)(1) (relating to suspension of tax) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—Subparagraph (A) shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a).''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect on the day after the date of the enactment of this Act.

Subtitle J—Additional Provisions

SEC. 897. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under subtitle B and the conservation and energy efficiency provisions under subtitle C, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of such recipients by income and other appropriate measurements.

Such analysis shall quantify the effectiveness of such provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of such provisions.

(b) REPORTS.—The Comptroller General of the United States shall report the analysis required under subsection (a) to Congress not later than December 31, 2004, and annually thereafter.

SEC. 898. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.''

(D) Subsection (f) of section 4082 is amended by striking ''section 4041(a)(1)'' and inserting ''subsections (d)(3) and (a)(1) of section 4041, respectively''.

(E) Paragraph (3) of section 4083(a) is amended by striking ''or a diesel-powered train''.

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

''(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.''

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 899. DISTRIBUTIONS FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

''(2) at least 90 percent of its gross income is derived from—

''(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

''(B) distributions or other income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and''

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership''.

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).''.

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

''(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).''.

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking ''section 851(b)(2)'' and inserting ''section 851(b)(2)(A)''.

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

''(B) not more than 25 percent of the value of its total assets is invested in—

''(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

''(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

''(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).''.

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

''(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 899A. CERTAIN BUSINESS RELATED CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

''(A) IN GENERAL.—In the case of specified credits—

''(i) this section and section 39 shall be applied separately with respect to such credits, and

''(ii) in applying paragraph (1) to such credits—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified credits).

''(B) SPECIFIED CREDITS.—For purposes of this subsection, the term 'specified credits' includes—

''(i) for taxable years beginning after December 31, 2004, the credit determined under section 40, and

''(ii) the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

''(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

''(II) during the 4-year period beginning on the date that such facility was originally placed in service.''.

(b) CONFORMING AMENDMENTS.—Paragraph (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting ''or the specified credits'' after ''employee credit''.

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.

(a) ALLOWANCE OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying pollution control equipment credit.''.

(b) AMOUNT OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following new section:

''SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying pollution control equipment credit for any taxable year is an amount equal to 15 percent of the basis of the qualifying pollution control equipment placed in service at a qualifying facility during such taxable year.

''(b) QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of this section, the term 'qualifying pollution control equipment' means any technology installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act, including thermal oxidizers, regenerative thermal oxidizers, scrubber systems, evaporative control systems, vapor recovery systems, flair systems, bag houses, cyclones, continuous emissions monitoring systems, and low nitric oxide burners.

''(c) QUALIFYING FACILITY.—For purposes of this section, the term 'qualifying facility' means any facility which produces not less than 1,000,000 gallons of ethanol during the taxable year.

''(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED PROPERTY.—Rules similar to section 48(a)(4) shall apply for purposes of this section.

''(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.''.

(c) RECAPTURE OF CREDIT WHERE EMISSIONS REDUCTION OFFSET IS SOLD.—Paragraph (1) of section 50(a) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of subparagraph (A), any investment property which is qualifying pollution control equipment (as defined in section 48B(b)) shall cease to be investment credit property with respect to a taxpayer if such taxpayer receives a payment in exchange for a credit for emission reductions attributable to such qualifying pollution control equipment for purposes of an offset requirement under part D of title I of the Clean Air Act.''.

(d) SPECIAL RULE FOR BASIS REDUCTION; RECAPTURE OF CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property), as amended by this Act, is amended by inserting ''or qualifying pollution control equipment credit'' after ''energy credit''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 899C. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale the original use of which commences with the taxpayer after the date of the enactment of this clause.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

''(E)(v) ..... 30''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, and prior to July 1, 2006.

TITLE IX—HOMESTEAD PRESERVATION ACT

SEC. 901. SHORT TITLE.

This title may be cited as the ''Homestead Preservation Act''.

SEC. 902. MORTGAGE PAYMENT ASSISTANCE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Housing and Urban Development (referred to in this section as the ''Secretary'') shall establish a program under which the Secretary shall award low-interest loans to eligible individuals to enable such individuals to continue to make mortgage payments with respect to the primary residences of such individuals.

(b) ELIGIBILITY.—To be eligible to receive a loan under the program established under subsection (a), an individual shall be—

(1) an individual that is a worker adversely affected by international economic activity, as determined by the Secretary;

(2) a borrower under a loan which requires the individual to make monthly mortgage payments with respect to the primary place of residence of the individual; and

(3) enrolled in a training or assistance program.

(c) LOAN REQUIREMENTS.—

(1) IN GENERAL.—A loan provided to an eligible individual under this section shall—

(A) be for a period of not to exceed 12 months;

(B) be for an amount that does not exceed the sum of—

(i) the amount of the monthly mortgage payment owed by the individual; and

(ii) the number of months for which the loan is provided;

(C) have an applicable rate of interest that equals 4 percent;

(D) require repayment as provided for in subsection (d); and

(E) be subject to such other terms and conditions as the Secretary determines appropriate.

(2) ACCOUNT.—A loan awarded to an individual under this section shall be deposited into an account from which a monthly mortgage payment will be made in accordance with the terms and conditions of such loan.

(d) REPAYMENT.—

(1) IN GENERAL.—An individual to which a loan has been awarded under this section shall be required to begin making repayments on the loan on the earlier of—

(A) the date on which the individual has been employed on a full-time basis for 6 consecutive months; or

(B) the date that is 1 year after the date on which the loan has been approved under this section.

(2) REPAYMENT PERIOD AND AMOUNT.—

(A) REPAYMENT PERIOD.—A loan awarded under this section shall be repaid on a monthly basis over the 5-year period beginning on the date determined under paragraph (1).

(B) AMOUNT.—The amount of the monthly payment described in subparagraph (A) shall be determined by dividing the total amount provided under the loan (plus interest) by 60.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to prohibit an individual from—

(i) paying off a loan awarded under this section in less than 5 years; or

(ii) from paying a monthly amount under such loan in excess of the monthly amount determined under subparagraph (B) with respect to the loan.

(e) REGULATIONS.—Not later than 6 weeks after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations that permit an individual to certify that the individual is an eligible individual under subsection (b).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for each of fiscal years 2005 through 2009.

TITLE X—OFFICE OF FEDERAL PROCUREMENT POLICY ACT IMPROVEMENTS

SEC. 1001. REPORT ON ACQUISITIONS OF GOODS FROM FOREIGN SOURCES.

(a) REPORT.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

''SEC. 43. REPORT ON ACQUISITIONS OF GOODS FROM FOREIGN SOURCES.

''(a) Not later than 60 days after the end of each fiscal year, the head of each executive agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by such executive agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(b) The report for a fiscal year under subsection (a) shall separately indicate the following information:

''(1) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(2) An itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.).

''(3) A summary of—

''(A) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(B) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(c) The head of each executive agency submitting a report under subsection (a) shall make the report publicly available by posting on an Internet website.

''(d) Subsection (a) shall not apply to any procurement for national security purposes entered into by—

''(1) the Department of Defense or any agency or entity thereof;

''(2) the Department of the Army, the Department of the Navy, the Department of the Air Force, or any agency or entity of any of the military departments;

''(3) the Department of Homeland Security;

''(4) the Department of Energy or any agency or entity thereof, with respect to the national security programs of that Department; or

''(5) any element of the intelligence community.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Office of Federal Procurement Policy Act is amended by adding at the end the following new item:

''Sec. 43. Report on acquisitions of goods from foreign sources.''.

(c) COMMERCE DEPARTMENT REPORT.—Not later than 60 days after the end of each fiscal year ending after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress and make publicly available by posting on an Internet website a report on the acquisitions by foreign governments of articles, materials, or supplies that were manufactured or extracted in the United States in that fiscal year. Such report shall indicate the dollar value of such articles, materials, or supplies.

TITLE XI—PROVISIONS RELATING TO TOBACCO

Subtitle A—Family Smoking Prevention and Tobacco Control

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

SEC. 1102. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2001, the tobacco industry spent more than $11,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price-sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the First Amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration and the restriction on the sale and distribution, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this subtitle.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion plays a crucial role in the decision of these minors to

begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in insuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be approved in advance of marketing, and to require that the evidence relied on to support approval of these products is rigorous.

SEC. 1103. PURPOSE.

The purposes of this subtitle are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 1104. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this subtitle (or an amendment made by this subtitle) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this subtitle (or an amendment made by this subtitle) 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. 1105. SEVERABILITY.

If any provision of this subtitle, the amendments made by this subtitle, or the application of any provision of this subtitle to any person or circumstance is held to be invalid, the remainder of this subtitle, the amendments made by this subtitle, and the application of the provisions of this subtitle to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

CHAPTER 1—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 1111. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(nn)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring, coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(13) RETAILER.—The term 'retailer' means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(15) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(16) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''(18) TOBACCO PRODUCT MANUFACTURER.—Term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 1112 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 921(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing

quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS SHALL REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to

which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products shall be considered as adult written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult written publications.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—The Secretary may, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, 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. Good manufacturing practices may include the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial

resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—A cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its

publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll your own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself such power.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 15-month period, until the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless approval of an application filed pursuant to subsection (d) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(A) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF APPROVAL.—

''(i) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the approval of an application under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the approval of the application is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—No distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be

final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 1112 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 1112 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco related disease.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in paragraph (1) and subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 554(b)(4) of title 5, United States Code, shall be treated as trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. 1112. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 1113. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an

amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the Executive Branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

CHAPTER 2—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 1121. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'.
'WARNING: Tobacco smoke can harm your children'.
'WARNING: Cigarettes cause fatal lung disease'.
'WARNING: Cigarettes cause cancer'.
'WARNING: Cigarettes cause strokes and heart disease'.
'WARNING: Smoking during pregnancy can harm your baby'.
'WARNING: Smoking can kill you'.
'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'.
'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(5) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.''.

SEC. 1122. 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 1121, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 1123. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 1124. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'.
'WARNING: This product can cause gum disease and tooth loss'.
'WARNING: This product is not a safe alternative to cigarettes'.
'WARNING: Smokeless tobacco is addictive'.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 1125. 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 1123, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 1126. 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 1121, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

CHAPTER 3—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 1131. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 1111, is further amended by adding at the end the following:

''SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

SEC. 1132. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

Subtitle B—Tobacco Market Transition

SEC. 1140. SHORT TITLE OF SUBTITLE.

This subtitle may be cited as the ''Tobacco Market Transition Act of 2004''.

CHAPTER 1—TERMINATION OF CURRENT TOBACCO PROGRAMS

SEC. 1141. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) TOBACCO STATISTICS.—The Act of January 14, 1929 (45 Stat. 1079; 7 U.S.C. 501 et seq.) is repealed.

(b) TOBACCO STANDARDS.—The Tobacco Inspection Act (7 U.S.C. 511 et seq.) is repealed.

(c) TOBACCO INSPECTIONS.—Section 213 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

(d) TOBACCO CONTROL.—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515 et seq.), is repealed.

(e) COMMODITY HANDLING ORDERS.—Section 8c(2)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(2)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking ''tobacco,''.

(f) PROCESSING TAX.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''; and

(2) in paragraph (6)B)(i), by striking '', or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,''.

(g) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(h) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(i) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking ''and tobacco'';

(5) in paragraph (12), by striking ''tobacco,'';

(6) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(j) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(k) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(l) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(m) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''rice, or tobacco'' and inserting ''or rice''; and

(2) in the first sentence of subsection (b), by striking ''rice, or tobacco'' and inserting ''or rice''.

(n) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking ''rice, or tobacco'' each place it appears in subsections (a) and (b) and inserting ''or rice''; and

(2) in subsection (a)—

(A) in the first sentence, by striking ''all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,''; and

(B) in the last sentence, by striking ''$500;'' and all that follows through the period at the end of the sentence and inserting ''$500.''.

(o) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) by striking subsection (c).

(p) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, and tobacco'' and inserting ''and cotton''; and

(2) by striking subsections (d), (e), and (f).

(q) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(r) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(s) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(t) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(u) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(v) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

SEC. 1142. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn,'' and inserting ''corn'';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking '', except tobacco,''; and

(B) by striking ''and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;''; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ''tobacco,''.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ''(other than tobacco)'' after ''agricultural commodities'' each place it appears.

SEC. 1143. LIABILITY.

This title and the amendments made by this title shall not affect the liability of any person under any provision of law with respect to any crop of tobacco planted before the effective date prescribed in section 1162.

CHAPTER 2—TOBACCO ASSISTANCE

SEC. 1151. TOBACCO ASSISTANCE.

Title III of the Agricultural Adjustment Act of 1938 is amended by inserting after subtitle D (7 U.S.C. 1379a et seq.) the following:

''Subtitle E—Tobacco Assistance

''SEC. 380A. DEFINITIONS.

''In this subtitle:

''(1) ACTIVE PRODUCER OF TOBACCO.—The term 'active producer of tobacco' means a person that—

''(A) is actively engaged in the production of tobacco marketed or considered planted; and

''(B) shares in the risk of producing the tobacco.

''(2) APPLICABLE FISCAL YEAR.—The term 'applicable fiscal year' means each of fiscal years 2004 through 2013.

''(3) BASE PERIOD.—The term 'base period' means the 1-year period ending the June 30 preceding each applicable fiscal year.

''(4) CONSIDERED PLANTED.—The term 'considered planted' means tobacco planted but failed to be produced as a result of a natural disaster, as determined by the Secretary.

''(5) DEPARTMENT.—The term 'Department' means the Department of Agriculture.

''(6) ELIGIBLE STATE.—The term 'eligible State' means—

''(A) in the case of section 380O, each of the States of Maryland, Pennsylvania, South Carolina, and North Carolina; and

''(B) in the case of section 380Q, each of the States of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

''(7) IMPACTED COMMUNITY.—The term 'impacted community' means a community in an eligible State that is adversely affected by a reduction in gross receipts from the sale of tobacco.

''(8) MARKET SHARE.—The term 'market share' means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for the applicable fiscal year for an assessment under section 380T.

''(9) PRODUCTION BOARD.—The term 'Production Board' means a Production Board established for a kind of tobacco under section 380H.

''(10) QUOTA TOBACCO.—The term 'quota tobacco' means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2002 tobacco marketing years under a marketing quota or allotment program established under part I of subtitle B (as in effect before the effective date of this subtitle).

''(11) TOBACCO.—The term 'tobacco' means each of the following kinds of tobacco:

''(A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.

''(B) Fire-cured tobacco, comprising types 22 and 23.

''(C) Dark air-cured tobacco, comprising types 35 and 36.

''(D) Virginia sun-cured tobacco, comprising type 37.

''(E) Virginia fire-cured tobacco, comprising type 21.

''(F) Burley tobacco, comprising type 31.

''(G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

''(12) TOBACCO QUALITY BOARD.—The term 'Tobacco Quality Board' means the Tobacco Quality Board established under section 380G.

''(13) TOBACCO QUOTA HOLDER.—The term 'tobacco quota holder' means a person that is considered an tobacco quota holder under section 380B(b).

''(14) TOBACCO TRUST FUND.—The term 'Tobacco Trust Fund' means the Tobacco Trust Fund established under section 380S.

''(15) TRADITIONAL PRODUCER OF TOBACCO.—The term 'traditional producer of tobacco' means a person that, for at least 1 of the 2000, 2001, or 2002 tobacco marketing years—

''(A) was actively engaged in the production of tobacco marketed, or considered planted, under a marketing quota established under part I of subtitle B (as in effect before the effective date of this subtitle); and

''(B) shared in the risk of producing the tobacco.

''(16) TRADITIONAL TOBACCO COUNTY.—

''(A) IN GENERAL.—The term 'traditional tobacco county' means a county in the United States that had 1 or more farms operated by traditional producers of tobacco under a marketing quota for at least 1 of the marketing years described in paragraph (15).

''(B) INCLUSION.—For the purpose of determining the crop acreage base of an active producer of tobacco for a kind of tobacco produced in the State of Georgia under section 380I(c)(3), the term 'traditional tobacco county' includes a county that is contiguous to a county described in subparagraph (A).

''CHAPTER 1—PAYMENTS TO TOBACCO QUOTA HOLDERS AND TRADITIONAL PRODUCERS

''SEC. 380B. TRANSITION PAYMENTS TO TOBACCO QUOTA HOLDERS.

''(a) IN GENERAL.—The Secretary shall make transition payments to each tobacco quota holder.

''(b) TOBACCO QUOTA HOLDER.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall consider a person to be a tobacco quota holder under this section if the person held, as of July 1, 2002, a basic quota or farm acreage allotment (as applicable) for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B (as in effect before the effective date of this subtitle).

''(2) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in paragraph (1) as of July 1, 2002, and the parties to the sale are unable to agree to the disposition of eligibility for payments under this section, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds of the quota.

''(3) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of July 1, 2002, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

''(4) PROTECTED BASES.—A person that owns a farm with a tobacco poundage quota that is protected under a conservation reserve program contract entered into under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) shall be considered to be a tobacco quota holder with respect to the protected poundage.

''(5) QUANTITY OF QUOTA HELD.—

''(A) IN GENERAL.—A person shall be considered a tobacco quota holder for purposes of this section only with respect to that quantity of quota that qualifies the person as a tobacco quota holder.

''(B) INCLUDED QUOTA.—The determination of the tobacco poundage amount for which the person qualifies shall—

''(i) be based on the quantity of quota held by person on January 1, 2004;

''(ii) subject to clause (iii), not be greater than the quantity of quota held by the person for the 2002 crop; and

''(iii) take into account—

''(I) sales of quota that occurred during the period beginning July 1, 2002, and ending December 31, 2004; and

''(II) any transfers of quota that took place after July 1, 2002.

''(c) APPLICATION.—

''(1) IN GENERAL.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a tobacco quota holder.

''(2) ADMINISTRATION.—The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

''(d) BASE QUOTA LEVEL.—

''(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each tobacco quota holder, as determined under this subsection.

''(2) LEVEL.—The base quota level for each tobacco quota holder shall be equal to the quantity of quota that qualifies a person as the tobacco quota holder under subsection (b)(5).

''(e) PAYMENT.—The Secretary shall make payments to each tobacco quota holder under subsection (b) in an amount obtained by multiplying—

''(1) 80 cents per pound for each of fiscal years 2004 through 2013; by

''(2) the base quota level established for the quota holder under subsection (d).

''(f) TIME FOR PAYMENT.—Subject to section 380D(c), the payments to tobacco quota holders required under this section shall be made by, to the maximum extent practicable, the date that is 180 days after the date of enactment of this subtitle and each November 1 thereafter.

''SEC. 380C. DIRECT PAYMENTS TO TRADITIONAL PRODUCERS OF TOBACCO.

''(a) IN GENERAL.—The Secretary shall make direct payments under this section to traditional producers of tobacco.

''(b) ELIGIBILITY.—

''(1) IN GENERAL.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a traditional producer of tobacco.

''(2) ADMINISTRATION.—The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

''(c) BASE QUOTA LEVEL.—

''(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each traditional producer of tobacco, as determined under this subsection.

''(2) FLUE-CURED AND BURLEY TOBACCO.—In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each tobacco quota holder shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B (as in effect before the effective date of this subtitle) for the 2002 marketing year for quota tobacco produced on the farm.

''(3) OTHER KINDS OF TOBACCO.—In the case of each kind of tobacco other than Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), for the purpose of calculating a payment to a traditional producer of tobacco, the base quota level for the traditional producer of tobacco shall be the quantity obtained by multiplying—

''(A) the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm; by

''(B) the actual yield of the crop of quota tobacco produced on the farm.

''(d) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall make payments to each traditional producer of tobacco, as determined under subsection (b), in an amount obtained by multiplying—

''(A) 40 cents per pound for each of fiscal years 2004 through 2013; by

''(B) the base quota level established for the traditional producer of tobacco under subsection (c).

''(2) PAYMENT RATE.—The rate for payments to a traditional producer of quota tobacco under paragraph (1)(A) shall be equal to—

''(A) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for all 3 of the 2000, 2001, and 2002 tobacco marketing years, the rate prescribed under paragraph (1)(A) for the applicable fiscal year;

''(B) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for not more than 2 of the 2000, 2001, and 2002 tobacco marketing years, ⅔ of the rate prescribed under paragraph (1)(A) for the applicable fiscal year; and

''(C) in the case of a person that produced quota tobacco marketed, or considered planted, under a marketing quota for not more than 1 of the 2000, 2001, and 2002 tobacco marketing years, ⅓ of the rate prescribed under paragraph (1)(A) for the applicable fiscal year.

''(e) TIME FOR PAYMENT.—Subject to section 380D(c), the payments to traditional producers of tobacco required under this section shall be made by, to the maximum extent practicable, the date that is 180 days after the date of enactment of this subtitle and each November 1 thereafter.

''SEC. 380D. ADMINISTRATION.

''(a) RESOLUTION OF DISPUTES.—

''(1) IN GENERAL.—Any dispute regarding the eligibility of a person to receive a payment under this subtitle, or the amount of the payment, may be appealed to the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

''(2) NATIONAL APPEALS DIVISION.—Any adverse determination of a county committee under subsection (a) may be appealed to the National Appeals Division established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6991 et seq.).

''(b) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

''(c) ADVANCED PAYMENTS.—

''(1) IN GENERAL.—The Secretary shall permit a tobacco quota holder and a traditional producer of tobacco to elect to receive advanced payments for 2 or more fiscal years under this chapter by selecting 1 of 4 advance payment options established by the Secretary, including a lump sum payment option.

''(2) RISK.—A tobacco quota holder or traditional producer of tobacco that elects to receive accelerated payments shall bear the expense of the discount in value for acceleration of the payments.

''(3) QUALIFIED FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—The Secretary shall provide advanced payments under this subsection through 1 or more qualified financial institutions designated by the Secretary.

''(B) ADMINISTRATION.—In providing advanced payments under this subsection, a qualified financial institution shall (in accordance with guidance issued by the Secretary)—

''(i) offer the advanced payments regardless of the location or size of the payments;

''(ii) apply updated discount rates that vary only by payment term; and

''(iii) distribute the advanced payments in accordance with the option elected by the tobacco quota holder or traditional producer of tobacco.

''(4) COUNTY OFFICES.—A county office of the Department may receive applications and other documentation necessary to receive advanced payments under this subsection, on behalf of the Secretary and qualified financial institutions.

''(d) TREATMENT OF PAYMENTS.—Payments received by a tobacco quota holder or traditional producer of tobacco under this chapter shall be considered received not earlier than the date the tobacco quota holder or traditional producer of tobacco first receives the payments.

''CHAPTER 2—TOBACCO QUALITY AND QUANTITY

''SEC. 380G. TOBACCO QUALITY BOARD.

''(a) IN GENERAL.—The Secretary shall establish a permanent advisory board within the Department, to be known as the 'Tobacco Quality Board'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Tobacco Quality Board shall consist of 13 members, of which—

''(A) 5 members shall be appointed by the Secretary from nominations submitted by representatives of tobacco producers in the United States, including at least—

''(i) 1 representative of Flue-cured tobacco producers;

''(ii) 1 representative of Burley tobacco producers; and

''(iii) 1 representative of dark fire-cured tobacco producers;

''(B) 5 members shall be appointed by the Secretary from nominations submitted by representatives of tobacco product manufacturers in the United States, including at least—

''(i) 1 representative of smokeless tobacco product manufacturers; and

''(ii) 1 representative of export dealers of tobacco; and

''(C) 3 at-large members shall be appointed by the Secretary, including at least 1 officer or employee of the Department.

''(2) CHAIRPERSON.—The Secretary shall appoint the chairperson of the Tobacco Quality Board, with a different member serving as chairperson of the Tobacco Quality Board each term.

''(3) TERMS.—Each member of the Tobacco Quality Board shall serve for 2-year terms, except that the terms of the members first appointed to the Tobacco Quality Board shall be staggered so as to establish a rotating membership of the Tobacco Quality Board, as determined by the Secretary.

''(c) DUTIES.—The Tobacco Quality Board shall—

''(1) determine and describe the physical characteristics of tobacco produced in the United States and unmanufactured tobacco imported into the United States;

''(2) assemble and evaluate, in a systematic manner, concerns and problems with the quality of tobacco produced in the United States, expressed by domestic and foreign buyers and manufacturers of tobacco products;

''(3) review data collected by Federal agencies on the physical and chemical integrity of tobacco produced in the United States and unmanufactured tobacco imported into the United States, to ensure that tobacco being used in domestically-manufactured tobacco products is of the highest quality and is free from prohibited physical and chemical agents;

''(4) investigate and communicate to the Secretary—

''(A) conditions with respect to the production of tobacco that discourage improvements in the quality of tobacco produced in the United States; and

''(B) recommendations for regulatory changes that would address tobacco quality issues;

''(5) conduct oversight regarding tobacco marketing issues (such as opening sales dates and marketing regulations) applicable to auction markets;

''(6) provide assistance to Federal agencies on actions taken by the Federal agencies that affect the quality or quantity of tobacco produced in the United States;

''(7) not later than a date determined by the Secretary, make recommendations to the Secretary, and the applicable Production Board established for the kind of tobacco, on the range of base years for the maximum crop acreage base under section 380I(c)(3)(B), and for the maximum crop poundage base under section 380I(d)(3)(B), for each crop of each kind of tobacco, except that the range of base years shall be the crop years for the 1998 through 2002 crops unless otherwise determined by the Tobacco Quality Board; and

''(8) carry out such other related activities as are assigned to the Tobacco Quality Board by the Secretary.

''(d) ADMINISTRATION.—The Secretary shall provide the Tobacco Quality Board with (as determined by the Secretary)—

''(1) a staff that is—

''(A) experienced in the sampling and analysis of unmanufactured tobacco; and

''(B) capable of collecting data and monitoring tobacco production information; and

''(2) other resources and information necessary for the Tobacco Quality Board to perform the duties of the Tobacco Quality Board under this subtitle, including—

''(A) information concerning acreage devoted to the production of each kind of tobacco; and

''(B) international information from the Foreign Agricultural Service.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Tobacco Quality Board.

''SEC. 380H. PRODUCTION BOARDS.

''(a) IN GENERAL.—The Secretary shall establish a permanent advisory board for each kind of tobacco, to be known as a 'Production Board'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—Subject to paragraph (2), a Production Board for a kind of tobacco shall consist of—

''(A) not more than 10 members appointed by the Secretary from nominations submitted by representatives of producers of that kind of tobacco in the United States; and

''(B) 1 officer or employee of the Department appointed by the Secretary.

''(2) ALLOCATION OF MEMBERSHIP.—In appointing members to a Production Board established for a kind of tobacco, the number of members appointed by the Secretary to represent each State shall, to the maximum extent practicable, bear the same ratio to the total number of members of the Production Board as—

''(A) the total volume of domestic sales of the kind of tobacco produced in the State during the most recent period for which data is available; bears to

''(B) the total volume of domestic sales of the kind of tobacco produced in all States during the most recent period for which data is available.

''(3) CHAIRPERSON.—The Secretary shall appoint the chairperson of a Production Board, with a different member serving as chairperson of the Production Board each term.

''(4) TERMS.—Each member of a Production Board shall serve for 2-year terms, except that the terms of the members first appointed to the Production Board shall be staggered so as to establish a rotating membership of the Production Board, as determined by the Secretary.

''(c) DUTIES.—A Production Board established for a kind of tobacco shall—

''(1) not later than a date determined by the Secretary, make recommendations to the Secretary on the base year, within the range of base years recommended by the Tobacco Quality Board under section 380G(c)(7), for the maximum crop acreage base under section 380I(c)(3)(B) for each crop of each kind of tobacco; and

''(2) carry out such other related activities as are assigned to the Production Board by the Secretary.

''(d) ADMINISTRATION.—The Secretary shall provide each Production Board established for a kind of tobacco with (as determined by the Secretary)—

''(1) a staff that is knowledgeable about production and marketing of that kind of tobacco; and

''(2) other resources and information necessary for the Production Board to perform the duties of the Production Board under this subtitle, including information concerning acreage devoted to the production of each kind of tobacco.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a Production Board.

''SEC. 380I. TOBACCO PRODUCTION LIMITATION PROGRAMS.

''(a) DEFINITIONS.—In this section:

''(1) CROP ACREAGE BASE.—The term 'crop acreage base' means the crop acreage base for a kind of tobacco for a crop for an active producer of tobacco, as determined by the Secretary.

''(2) CROP POUNDAGE BASE.—The term 'crop poundage base' means the crop poundage base for a kind of tobacco for a crop for an active producer of tobacco, as determined by the Secretary.

''(3) PERMITTED ACREAGE.—The term 'permitted acreage' means the number of acres that may be devoted to the production of a kind of tobacco by an active producer of tobacco, consistent with the annual acreage limitation program, as determined by the Secretary.

''(4) PERMITTED POUNDAGE.—The term 'permitted poundage' means the number of pounds of a kind of tobacco for a crop may be produced by an active tobacco producer, consistent with the annual poundage limitation program, as determined by the Secretary.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall establish for each crop of each kind of tobacco—

''(A) an acreage limitation program in accordance with subsection (c); or

''(B) a poundage limitation in accordance with subsection (d).

''(2) CONSULTATION.—The Secretary shall carry out the acreage limitation program and the poundage limitation program for a kind of tobacco in consultation with the Tobacco Advisory Board and the applicable Production Board established for that kind of tobacco.

''(3) SUPPLY.—In carrying out an acreage limitation program or a poundage limitation program for a crop of a kind of tobacco, the Secretary shall determine whether the total supply of that kind of tobacco, in the absence of the respective production limitation program, will be

excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices.

''(4) ANNOUNCEMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall announce an acreage limitation program or poundage limitation program for each kind of tobacco not later than December 15 of the calendar year preceding the year in which the crop is harvested.

''(B) SPECIAL RULE FOR 2004 CROP.—In the case of the 2004 crop for a kind of tobacco, the Secretary shall announce an acreage limitation program or poundage limitation for each kind of tobacco as soon as practicable after the date of the enactment of the Tobacco Market Transition Act of 2004.

''(c) ACREAGE LIMITATION PROGRAM.—

''(1) IN GENERAL.—Under an acreage limitation program for a crop of a kind of tobacco announced under subsection (b), the limitation shall be achieved by applying a uniform percentage reduction to the crop acreage base for the kind of tobacco for the crop for active producers of that kind of tobacco in each traditional tobacco county, as determined by the Secretary.

''(2) CROP ACREAGE BASES.—

''(A) IN GENERAL.—The crop acreage base for an active producer of tobacco for a crop of each kind of tobacco shall equal the number of acres that is equal to—

''(i) in the case of the 2004 crop year, the average of the acreage planted and considered planted by the active producer of tobacco to the kind of tobacco for harvest in a traditional tobacco county in each of the 5 crop years preceding the crop year, as determined and adjusted by the Secretary (in consultation with the Tobacco Quality Board and the applicable Production Board); and

''(ii) in the case of each subsequent crop year, the number of acres planted and considered planted by the active producer of tobacco to the kind of tobacco for harvest in a traditional tobacco county in the preceding crop year, as determined and adjusted by the Secretary (in consultation with the Tobacco Quality Board and the applicable Production Board).

''(B) MAXIMUM CROP ACREAGE BASES.—

''(i) IN GENERAL.—The total quantity of acreage devoted to a kind of tobacco by active producers of tobacco during a crop year shall not exceed the total quantity of acreage devoted to the kind of tobacco by active producers during a crop year determined by the Secretary.

''(ii) ADJUSTMENT.—If the active producers of a kind of tobacco demonstrate to the Secretary that the application of clause (i) to a crop of a kind of tobacco will result in unbalanced supply and demand conditions, the Secretary may adjust the total quantity of acreage that may be devoted to the kind of tobacco by active producers during the crop year.

''(C) SALE, LEASE, OR TRANSFER OF CROP ACREAGE BASES.—An active producer of tobacco shall not sell, lease, or transfer to another person a crop acreage base established for the active producer of tobacco under this paragraph.

''(D) REALLOCATION OF UNUSED CROP ACREAGE BASES.—

''(i) COUNTY POOL.—If an active producer of tobacco with a crop acreage base for a kind of tobacco elects not to use all or part of the crop acreage base to continue to produce that kind of tobacco, the unused crop acreage base shall be placed in a pool established for the traditional tobacco county for reallocation by the Secretary to other producers of that kind of tobacco in the traditional tobacco county that request the crop acreage base.

''(ii) STATE POOL.—If any crop acreage base for a kind of tobacco remains after the crop acreage base is made available to producers of that kind of tobacco in the traditional tobacco county in a State, the unused crop acreage base shall be placed in a pool established for the State for reallocation by the Secretary to other producers of that kind of tobacco in a traditional tobacco county.

''(iii) NEW PRODUCERS.—In reallocating unused crop acreage bases for a kind of tobacco in a traditional tobacco county made available under each of clauses (i) and (ii), the Secretary shall make available to any new producers of that kind of tobacco in the traditional tobacco county up to 10 percent of the crop acreage bases available for reallocation for the kind of tobacco in the traditional tobacco county.

''(d) POUNDAGE LIMITATION PROGRAM.—

''(1) IN GENERAL.—Under a poundage limitation program for a crop of a kind of tobacco, the Secretary shall achieve the limitation by applying a uniform percentage adjustment to the crop poundage base of an active producer of tobacco for the kind of tobacco in each traditional tobacco county, as determined by the Secretary.

''(2) DETERMINATION OF CROP POUNDAGE BASES.—

''(A) 2004 CROP YEAR.—The crop poundage base for an active tobacco producer for the 2004 crop of a kind of tobacco shall equal the average of the number of pounds of that kind of tobacco harvested by the active tobacco producer in a traditional tobacco county and marketed in each of the 5 crop years preceding the crop year, as determined by the Secretary.

''(B) SUBSEQUENT CROP YEARS.—In the case of the 2005 and subsequent crops of each kind of tobacco, the crop poundage base for an active tobacco producer of a kind of tobacco shall equal the number of pounds of that kind of tobacco harvested by the active tobacco producer in a traditional tobacco county and marketed in the preceding crop year, as determined and adjusted by the Secretary.

''(3) MAXIMUM CROP POUNDAGE BASES.—

''(A) IN GENERAL.—The total number of pounds devoted to a kind of tobacco by active tobacco producers during a crop year shall not exceed the total number of pounds devoted to the kind of tobacco by active tobacco producers during a crop year determined by the Secretary.

''(B) ADJUSTMENT.—If the active tobacco producers of a kind of tobacco demonstrate to the Secretary that the application of paragraph (1) to a crop of a kind of tobacco will result in unbalanced supply and demand conditions, the Secretary may adjust the total number of pounds that may be devoted to the kind of tobacco by active tobacco producers during the crop year.

''(4) SALE, LEASE, OR TRANSFER OF CROP POUNDAGE BASES.—

''(A) PROHIBITION.—An active producer of tobacco shall not directly or indirectly sell, lease, or transfer to another person or other legal entity a crop poundage base established for an active tobacco producer under this subsection.

''(B) EXCEPTION.—If the crop poundage base of an active producer of tobacco for a type of tobacco covers tobacco that was produced by the producer in more than 1 traditional tobacco county, the producer may elect to consolidate the base in a single traditional tobacco county in which the producer bore or shared in the risk of producing a crop of that kind of tobacco for the 2002 crop year.

''(5) REALLOCATION OF UNUSED CROP POUNDAGE BASES.—

''(A) COUNTY POOL.—If an active producer of tobacco with a crop poundage base for a kind of tobacco elects not to use all or part of the crop poundage base, the unused crop poundage base shall be placed in a pool established for the traditional tobacco county where the unused crop poundage base was originally located for reallocation by the Secretary to other active producers of tobacco of that kind of tobacco in the traditional tobacco county, in a manner determined by the Secretary.

''(B) STATE POOL.—If any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind of tobacco in the traditional tobacco county in a State under subparagraph (A), the unused crop poundage base shall be placed in a pool established for the State for reallocation by the Secretary to other producers of that kind of tobacco in traditional tobacco counties, in a manner determined by the Secretary.

''(C) TRADITIONAL GROWING AREA POOL.—If any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind of tobacco under subparagraphs (A) and (B), the unused crop poundage base shall be placed in a pool established for reallocation by the Secretary to other producers of that kind of tobacco in a traditional tobacco county for that kind of tobacco.

''(D) NEW PRODUCERS.—In reallocating unused crop poundage bases for a kind of tobacco in a traditional tobacco county made available under any of subparagraphs (A) through (C), the Secretary shall make available to any new producers of that kind of tobacco in the traditional tobacco county up to 10 percent of the crop poundage bases available for reallocation for the kind of tobacco in the traditional tobacco county.

''(e) COMPLIANCE.—

''(1) LOANS, PURCHASES, OR PAYMENTS.—An active producer of tobacco that knowingly produces a kind of tobacco in excess of the permitted acreage or permitted poundage, as applicable, for the kind of tobacco, or violates any lease or transfer requirements of this section, shall be ineligible for any loans, purchases, or payments for that crop of the kind of tobacco.

''(2) NO CARRYOVER.—An active producer of tobacco may not carry over permitted poundage or permitted acreage, as applicable, for a crop of a kind of tobacco, that is not produced by the producer, for production in a subsequent crop year.

''(3) PENALTIES.—

''(A) CRIMINAL PENALTY.—An active producer of tobacco that violates paragraph (1) shall be fined not more than $100,000 or imprisoned not more than 2 years, or both.

''(B) CIVIL PENALTY.—An active producer of tobacco that violates paragraph (2) shall be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco produced by the producer during the applicable crop year, as determined by the Secretary.

''(C) ADDITIONAL PENALTIES.—A civil penalty under subparagraph (B) for a violation shall be in addition to any criminal penalty under subparagraph (A) for the violation.

''(D) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—A United States district court shall have jurisdiction to prevent and restrain an active producer of tobacco from producing a kind of tobacco in excess of the permitted acreage for the kind of tobacco.

''(4) COMPLIANCE WITH CONSERVATION AND AGRICULTURAL REQUIREMENTS.—As a condition of the establishment of a crop acreage base or crop poundage base, as applicable, for active producers of tobacco for a crop of a kind of tobacco, the active producers of tobacco shall agree, during the crop year for which the crop acreage base or crop poundage base is established—

''(A) to comply with applicable conservation requirements under subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.);

''(B) to comply with applicable wetland protection requirements under subtitle C of title XII of the Act (16 U.S.C. 3821 et seq.);

''(C) to use the land of the active producer of tobacco, in a quantity equal to the crop acreage base for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary; and

''(D) to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices, as determined by the Secretary, if the agricultural or conserving use involves the noncultivation of any portion of the land referred to in subparagraph (C).

"CHAPTER 3—TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS

"SEC. 380O. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible States in accordance with this section to pay the cost of carrying out economic development initiatives in impacted communities.

''(b) APPLICATION.—To be eligible to receive payments under this section, an eligible 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 eligible State will carry out using amounts received under the grant; and

''(2) a description of the State department of agriculture that will administer amounts received under the grant.

''(c) AMOUNT OF GRANT.—From the amounts available to carry out this section, the Secretary shall allot—

''(1) $20,000,000 to the State of Maryland;

''(2) $14,000,000 to the State of Pennsylvania;

''(3) $50,000,000 to the State of South Carolina; and

''(4) $50,000,000 to the State of North Carolina.

''(d) PAYMENTS.—An eligible State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section, in 5 equal installments, in an amount that is equal to its allotment under subsection (c).

''(e) USE OF FUNDS.—Amounts received by an eligible State under this section shall be used to carry out economic development activities in impacted communities of the eligible State, as determined by the eligible State.

''(f) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2008.

"CHAPTER 4—COMPETITIVE GRANTS FOR TOBACCO RESEARCH

"SEC. 380Q. COMPETITIVE GRANTS FOR TOBACCO RESEARCH.

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall make competitive grants under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626) to colleges and universities located in eligible States to conduct research—

''(1) to assist tobacco producers to diversify crops or implement other means to reduce or eliminate the reliance of the producers on the production of tobacco or to promote alternative uses of tobacco or enhance the quality of tobacco produced in the United States; and

''(2) to foster and facilitate development, evaluation, and implementation of economically viable new agricultural technologies and enterprises for rural communities.

''(b) GRANT DISTRIBUTION.—In making grants under this section, the Secretary shall provide for an equitable distribution of the grants based on the volume of each kind of tobacco that is produced in each eligible State, as determined by the Secretary

''(c) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2008.

"CHAPTER 5—FUNDING

"SEC. 380S. TOBACCO TRUST FUND.

''(a) ESTABLISHMENT.—There is established in the Commodity Credit Corporation a revolving trust fund to be used in carrying out this subtitle (referred to in this section as the 'Fund'), consisting of—

''(1) such amounts as are deposited in the Fund under subsection (b);

''(2) such amounts as are necessary from the Commodity Credit Corporation; and

''(3) any interest earned on investment of amounts in the Fund under subsection (d).

''(b) DEPOSITS.—Revenues from assessments collected under section 380T shall be deposited in the Fund.

''(c) EXPENDITURES.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3) and notwithstanding any other provision of law, in addition to any other funds that may be available, the Secretary may use from the Fund such amounts as the Secretary determines are necessary—

''(A) to make payments to tobacco quota holders and traditional producers under chapter 1;

''(B) to pay necessary expenses of the Tobacco Quality Board and Production Boards and to carry out the acreage limitation program under chapter 2;

''(C) to make tobacco community economic development grants under chapter 3, in an amount equal to $16,800,000 for each of fiscal years 2004 through 2008;

''(D) to make competitive grants for tobacco research under chapter 4, in an amount equal to $12,000,000 for each of fiscal years 2004 through 2008;

''(E) to make grants to each association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) (as in effect before the effective date of this subtitle) to assist the association to transition to alternative methods of marketing tobacco in accordance with a plan approved by the Secretary, with the grants allocated on the basis of the proportion of tobacco marketed by each association, in an amount not to exceed $1,000,000 for each association for each kind of tobacco for each of fiscal years 2004 through 2008;

''(F) to make payments to appropriate tobacco warehouse associations, as determined by the Secretary, in an amount not to exceed $500,000 for each of fiscal years 2004 through 2008;

''(G) to pay administrative costs incurred by the Secretary in carrying out this subtitle; and

''(H) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2).

''(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—

''(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of law, the Secretary shall use funds of the Commodity Credit Corporation to make payments under paragraph (1).

''(B) REIMBURSEMENT TO COMMODITY CREDIT CORPORATION.—Not later than January 1, 2013, the Commodity Credit Corporation shall be reimbursed in full, with interest, for all funds of the Commodity Credit Corporation expended under subparagraph (A).

''(3) ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—An amount not to exceed $20,000,000 for each fiscal year of the amounts in the Fund shall be available to pay the administrative expenses necessary to carry out this subtitle.

''(B) TERMINATION DATE.—The authority provided by this paragraph terminates on September 30, 2013.

''(d) INVESTMENT OF AMOUNTS.—

''(1) IN GENERAL.—The Commodity Credit Corporation shall invest such portion of the Fund as is not, in the judgment of the Commodity Credit Corporation, required to meet current withdrawals.

''(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

''(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

''(A) on original issue at the issue price; or

''(B) by purchase of outstanding obligations at the market price.

''(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Commodity Credit Corporation at the market price.

''(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

''(e) ADMINISTRATION.—In administering the Fund, the Secretary shall make payments, reimburse agencies of the Department, and accept deposits without regard to limitations on total amounts of allotments and fund transfers under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).

"SEC. 380T. ASSESSMENTS.

''(a) DEFINITION OF GROSS DOMESTIC VOLUME.—In this section, the term 'gross domestic volume' means the volume of tobacco products—

''(1) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

''(2) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

''(b) ASSESSMENTS.—The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States.

''(c) TOBACCO TRUST FUND.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

''(d) ASSESSMENT FOR EACH CLASS OF TOBACCO PRODUCT.—

''(1) ALLOCATION BY CLASS OF TOBACCO PRODUCTS.—The percentage of the total amount to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in each applicable fiscal year shall be—

''(A) for cigarette manufacturers and importers, 99.409 percent;

''(B) for snuff manufacturers and importers, 0.428 percent;

''(C) for chewing tobacco manufacturers and importers, 0.098 percent;

''(D) for pipe tobacco manufacturers and importers, 0.021 percent; and

''(E) for roll-your-own tobacco manufacturers and importers, 0.044 percent.

''(2) ADJUSTMENT.—The Secretary shall adjust the percentage of the total amount to be assessed against, as determined under paragraph (1), and paid by, the manufacturers and importers of each class of tobacco product in each applicable fiscal year by multiplying the percentage of the total amount to be assessed, as determined under paragraph (1), by a fraction—

''(A) the numerator of which is the total volume of domestic sales of that class of tobacco product during the preceding applicable fiscal year; and

''(B) the denominator of which is the total volume of domestic sales of that class of tobacco product during fiscal year 2003.

''(3) TOTAL ASSESSMENT.—

''(A) IN GENERAL.—The total amount to be assessed against all manufacturers and importers of all classes of tobacco product in each applicable fiscal year shall be equal to the amount required to carry out this subtitle during the applicable fiscal year, as determined by the Secretary.

''(B) ADDITIONAL AMOUNT.—

''(i) IN GENERAL.—If the amount to be assessed after the application of paragraphs (1) and (2) is insufficient to carry out this subtitle during the applicable fiscal year, the Secretary may assess such additional amount as the Secretary determines to be necessary to carry out this subtitle during the applicable fiscal year.

''(ii) ALLOCATION.—The additional amount shall be allocated to the manufacturers and importers of each class of tobacco product in the same manner and based on the same percentages applied in determining the total amount to be assessed under paragraph (1), as adjusted under paragraph (2) during the applicable fiscal year.

''(4) NOTIFICATION OF ASSESSMENTS.—

''(A) IN GENERAL.—The Secretary shall notify all manufacturers and importers of tobacco

products of the amount of the assessment for each quarterly payment period.

''(B) CONTENTS.—The notice for a quarterly payment period shall describe gross domestic sales and market shares for the quarterly payment period and conform with the requirements of subsection (i).

''(5) TIMING OF ASSESSMENT PAYMENTS.—

''(A) IN GENERAL.—Assessments shall be collected at the end of each calendar year quarter.

''(B) BASE PERIOD QUARTER.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

''(C) AMOUNTS.—Subject to subparagraph (D), beginning with the calendar quarter ending on December 31 of each applicable fiscal year, the payments over 4 calendar quarters shall be sufficient to cover—

''(i) the payments required under chapter 1 on November 1 of that same applicable fiscal year; and

''(ii) other expenditures from the Tobacco Trust Fund required under section 380S during the base quarter periods corresponding to those 4 calendar quarters.

''(D) SPECIAL RULE.—In the case of payments required under chapter 1 that are due on September 30, 2004, the assessments shall be paid on that same date and correspond to the first base period of 6 months.

''(e) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—

''(1) IN GENERAL.—The assessment for each class of tobacco product shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

''(2) LIMITATION.—No manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume.

''(f) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product to be paid by each manufacturer or importer of the class of tobacco product under subsection (b) shall be determined for each quarterly payment period by multiplying—

''(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

''(2) the total amount of the assessment for that quarterly payment period under subsection (d), for the class of tobacco product.

''(g) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

''(2) GROSS DOMESTIC VOLUME.—The volume of domestic sales shall be calculated based on gross domestic volume.

''(3) MEASUREMENT.—For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

''(A) in the case of cigarettes, the numbers of cigarettes; and

''(B) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of those products.

''(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal Government agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

''(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—

''(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and

''(B) the payment of the taxes imposed under charter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

''(3) PENALTIES.—

''(A) IN GENERAL.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code.

''(B) ADDITIONAL CIVIL PENALTY.—In addition, the Secretary may assess against the person a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by the person during the applicable fiscal year, as determined by the Secretary.

''(i) ASSESSMENT NOTIFICATION; CONTENT.—

''(1) IN GENERAL.—The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for the applicable quarterly period.

''(2) DEADLINE.—The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under subsection (d)(5).

''(3) CONTENTS.—The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

''(A) The total combined assessment for all manufacturers and importers of tobacco products.

''(B) The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

''(C) Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to subsection (d)(2).

''(D) The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

''(E) The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

''(F) The manufacturer's or importer's market share of the applicable class of tobacco product as determined by the Secretary under subsection (f).

''(G) The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

''(j) CHALLENGE TO ASSESSMENT.—

''(1) APPEAL TO SECRETARY.—A manufacturer or importer subject to this section may contest an assessment imposed on the person under this section by notifying the Secretary not later than 10 business days after receiving the assessment notification required by subsection (i).

''(2) ESCROW.—The manufacturer and importer may place into escrow, in accordance with rules promulgated by the Secretary, only the portion of the assessment being challenged in good faith pending final determination of the assessment under this subsection.

''(3) INFORMATION.—The Secretary shall by regulation establish a procedure under which a person contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment is incorrect, including information to demonstrate the following:

''(A) The total combined assessment imposed by the Secretary on all manufacturers and importers is excessive.

''(B) The Secretary's allocation of the total assessment among the classes of tobacco products is incorrect.

''(C) The total volume of gross domestic sales of all manufacturers and importers of the relevant class of tobacco product calculated by the Secretary under subsection (f) is incorrect.

''(D) The level of gross domestic sales attributed to the person by the Secretary for purposes of calculating the person's market share under subsection (f) exceeds the person's actual domestic sales of that class of tobacco product.

''(E) The amount of the assessment attributed to the person by the Secretary exceeds the person's pro rata share based on the person's share of gross domestic sales.

''(4) CHALLENGE.—

''(A) IN GENERAL.—In challenging an assessment under this subsection, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

''(B) INCORRECT DETERMINATION.—The information may constitute evidence sufficient to establish that the Secretary's initial determination was incorrect, in which event the assessment shall be revised so that the manufacturer or importer is required only to pay the amount correctly determined.

''(5) TIME FOR REVIEW.—Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (2), the Secretary shall—

''(A) decide whether the information provided to the Secretary pursuant to that paragraph, and any other information that the Secretary determines, is appropriate is sufficient to establish that the original assessment was incorrect; and

''(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

''(6) IMMEDIATE PAYMENT OF UNDISPUTED AMOUNTS.—The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute.

''(7) JUDICIAL REVIEW.—

''(A) IN GENERAL.—Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies under this subsection.

''(B) TIME LIMITS.—Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under paragraph (5).

''(C) EXCESSIVE ASSESSMENTS.—The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, United States Code, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

''(8) REGULATIONS.—Not later than 180 days after the date of enactment of this subtitle, the Secretary shall promulgate regulations to implement this subsection (in accordance with section 301 of the Tobacco Market Transition Act of 2004).

''(k) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

''(l) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2013.

''SEC. 380U. COMMODITY CREDIT CORPORATION.

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this subtitle, to remain available until expended.

''SEC. 380V. TRANSITION PROVISIONS.

''(a) TOBACCO STOCKS.—

''(1) IN GENERAL.—To provide for the orderly disposition of quota tobacco held by an association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) (referred to in this section as an 'association'), loan pool stocks for each kind of tobacco held by the association shall be disposed of in accordance with this subsection.

''(2) ASSOCIATIONS.—For each kind of tobacco held by an association, the proportion of loan pool stocks for each kind of tobacco held by the association that shall be transferred to the association shall be equal to—

''(A) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, for the kind of tobacco; divided by

''(B) the average list price per pound for the kind of tobacco, as determined by the Secretary.

''(3) COMMODITY CREDIT CORPORATION.—Any loan pool stocks of a kind of tobacco of an association that are not disposed of in accordance with paragraph (2) shall be—

''(A) transferred by the association to the Commodity Credit Corporation; and

''(B) disposed of in a manner determined by the Secretary.

''(b) NO NET COST FUNDS.—

''(1) IN GENERAL.—Any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, that remain after the application of subsection (a) and sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1) (as in effect before the effective date of this subtitle) shall be transferred to the association for distribution to traditional producers of tobacco in accordance with a plan approved by the Secretary.

''(2) ASSOCIATIONS WITH NO LOAN POOL STOCKS.—In the case of an association that does not hold any loan pool stocks that are covered by subsection (a)(2), any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of the association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, shall be transferred to the association for distribution to traditional producers of tobacco in accordance with a plan approved by the Secretary.

''(c) REIMBURSEMENT TO COMMODITY CREDIT CORPORATION.—There shall be transferred from the Tobacco Trust Fund to each No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, such amounts as the Secretary determines will be adequate to reimburse the Commodity Credit Corporation for any net losses that the Corporation may sustain under its loan agreements with the association.''.

SEC. 1152. TOBACCO INSURANCE RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Section 522(b)(1) of the Federal Crop Insurance Act (7 U.S.C. 1522(b)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting appropriately;

(2) by striking ''The Corporation'' and inserting the following—

''(A) IN GENERAL.—The''; and

(3) by adding at the end the following:

''(B) TOBACCO RESEARCH AND DEVELOPMENT.—Subject to the availability of funds under subsection (e)(5), the Corporation shall provide a payment to reimburse an applicant for research and development costs directly related to a policy that is—

''(i) submitted to the Board and approved by the Board under section 508(h) for reinsurance;

''(ii) if applicable, offered for sale to producers; and

''(iii) addresses risk in the production of tobacco.''.

(b) ASSESSMENTS.—Section 522(e) of the Federal Crop Insurance Act (7 U.S.C. 1522(e)) is amended by adding at the end the following:

''(5) TOBACCO ASSESSMENT.—

''(A) IN GENERAL.—Effective for each marketing year for a kind of tobacco for which a commodity-specific plan of insurance is offered under this Act, subject to subparagraphs (B) through (D), each producer and purchaser of that kind of tobacco shall remit to the Insurance Fund established under section 516(c) a nonrefundable marketing assessment in an amount determined by the Secretary pursuant to subparagraphs (B) and (C).

''(B) TOTAL AMOUNT.—The total amount of producer and purchaser assessments for a kind of tobacco collected under this paragraph shall be equal to the amount that is necessary to carry out subsection (b)(1)(B).

''(C) ADMINISTRATION.—Producer and purchaser assessments for a kind of tobacco under this paragraph—

''(i) shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in paying assessments required under this paragraph; and

''(ii) shall not exceed 5 cents per pound.

''(D) TERMINATION.—Effective beginning with the 2010 crop of each kind of tobacco, the Secretary may terminate the collection of assessments for that kind of tobacco if the Secretary determines that further research and development under subsection (b)(1)(B) would not be productive.''.

(c) INSURANCE FUND.—Section 516(c)(1) of the Federal Crop Insurance Act (7 U.S.C. 1516(c)(1)) is amended by inserting ''assessments for tobacco research made available under section 522(e)(5),'' after ''under subsection (a)(2),''.

SEC. 1153. CONFORMING AMENDMENTS.

Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

(1) by inserting ''(A)'' after ''(1)'';

(2) by striking ''by'' at the end and inserting ''or''; and

(3) by adding at the end the following:

''(B) in the case of the 2003 marketing year, the price support rate for the kind of tobacco involved in effect under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) at the time of the violation; by''.

CHAPTER 3—IMPLEMENTATION

SEC. 1161. REGULATIONS.

(a) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this subtitle and the amendments made by this subtitle.

(b) PROCEDURE.—The promulgation of the regulations and administration of this subtitle and the amendments made by this subtitle shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

SEC. 1162. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall apply to the 2004 and subsequent crops of each kind of tobacco.

NOMINATION OF WILLIAM GERRY MYERS III

Mr. FRIST. Mr. President, as in executive session, I would have asked unanimous consent that on Monday, July 19, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of the nomination of William Myers to be U.S. circuit judge for the Ninth Circuit. That would have been objected to. The unanimous consent request would have gone on to say 5 hours of debate, to be equally divided, to be followed by a vote on the confirmation at 2:15 on Tuesday, July 20, with no intervening action or debate. That unanimous consent would have been objected to by the other side of the aisle.

EXECUTIVE SESSION

NOMINATION OF WILLIAM GERRY MYERS III TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, at this juncture, I now move to proceed to executive session for the consideration of Calendar No. 603.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the motion.

The motion was agreed to.

The Senate will now go into executive session and proceed to the nomination of William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit, which the clerk will report.

The legislative clerk read the nomination of William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit.

CLOTURE MOTION

Mr. FRIST. I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 603, William Gerry Myers III of Idaho, to be United States Circuit Judge for the Ninth Circuit, Vice Thomas G. Nelson, retiring.

Bill Frist, Orrin Hatch, Christopher Bond, Chuck Hagel, Ted Stevens, John Cornyn, Wayne Allard, Lindsey Graham, Sam Brownback, Gordon Smith, Lisa Murkowski, Lamar Alexander, Robert Bennett, Elizabeth

Dole, Don Nickles, James Inhofe, and Conrad Burns.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived, that the vote on cloture occur at 2:15 on Tuesday, July 20, and further that the Senate now resume legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

THRIFT SAVINGS PLAN OPEN ELECTIONS ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 606, S. 2479.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2479) to amend chapter 84 of title 5, United States Code, to provide for Federal employees to make elections to make, modify, and terminate contributions to the Thrift Savings Fund at any time, and for other purposes.

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

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

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

The bill (S. 2479) was read the third time and passed, as follows:

S. 2479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTIONS FOR THRIFT SAVINGS PLAN CONTRIBUTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Thrift Savings Plan Open Elections Act of 2004''.

(b) IN GENERAL.—Section 8432(b)(1)(A) of title 5, United States Code, is amended—

(1) in the first sentence—

(A) by inserting ''(i)'' before ''The Executive Director''; and

(B) by striking ''shall be afforded a reasonable period every 6 months to elect to'' and inserting ''may'';

(2) by striking the second sentence; and

(3) by adding at the end the following:

''(ii) An election to make contributions under this paragraph—

''(I) may be made at any time;

''(II) shall take effect on the earliest date after the election that is administratively feasible; and

''(III) shall remain in effect until modified or terminated.''.

(c) CONTINUATION OF NOT MAKING IMMEDIATE AGENCY CONTRIBUTIONS.—Section 8432(b)(4)(C) of title 5, United States Code, is amended—

(1) by inserting ''(i)'' after ''(C)''; and

(2) by adding at the end the following:

''(ii) Notwithstanding subparagraph (A) or (B), contributions under paragraphs (1) and (2) of subsection (c) shall not begin to be made with respect to an employee or Member described under paragraph (2)(A) or (B) until the date that such contributions would have begun to be made in accordance with this paragraph as administered on the date preceding the date of enactment of the Thrift Savings Plan Open Elections Act of 2004.''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CIVIL SERVICE RETIREMENT SYSTEM PARTICIPATION.—Section 8351(a)(2) of title 5, United States Code, is amended by striking ''only during a period'' and inserting ''as''.

(2) CONTRIBUTIONS BY PREVIOUSLY INELIGIBLE EMPLOYEES.—Section 8432(b)(2) of title 5, United States Code, is amended—

(A) in subparagraph (A), by striking ''second period'' and inserting ''date'';

(B) in subparagraph (C), by striking ''second period'' and inserting ''date''; and

(C) in subparagraph (D) by striking ''other than during a period afforded'' and inserting ''as provided''.

(3) PROVISION OF INFORMATION.—Section 8439(c)(2) of title 5, United States Code, is amended by striking ''at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title'' and inserting ''on a regular basis''.

(4) JUSTICES AND JUDGES.—Section 8440a(a)(2) of title 5, United States Code, is amended by striking ''only during a period'' and inserting ''as''.

(5) BANKRUPTCY JUDGES AND MAGISTRATE JUDGES.—Section 8440b(a)(2) of title 5, United States Code, is amended by striking ''only during a period'' and inserting ''as''.

(6) COURT OF FEDERAL CLAIMS JUDGES.—Section 8440c(a)(2) of title 5, United States Code, is amended by striking ''only during a period'' and inserting ''as''.

(7) JUDGES OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.—Section 8440d(a)(2) of title 5, United States Code, is amended by striking ''only during a period'' and inserting ''as''.

(8) MEMBERS OF THE UNIFORMED SERVICES.—Section 8440e(b)(2)(A) of title 5, United States Code, is amended—

(A) by striking ''only during a period'' and inserting ''as''; and

(B) by striking all after section ''8432(b)'' and inserting a period.

SEC. 2. ENHANCING FINANCIAL LITERACY.

(a) IN GENERAL.—The Federal Retirement Thrift Investment Board (in this section referred to as the ''Board'') shall periodically evaluate whether the tools available to participants provide the information needed to understand, evaluate, and compare financial products, services, and opportunities offered through the Thrift Savings Plan. The Board shall use these evaluations to improve its existing education program for Thrift Savings Plan participants.

(b) REPORT ON FINANCIAL LITERACY EFFORTS.—The Board shall annually report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on its Thrift Savings Plan education efforts on behalf of plan participants.

(c) STRATEGY.—As part of the retirement training offered by Office of Personnel Management under section 8350 of title 5, United States Code, the Office, in consultation with the Board, shall—

(1) not later than 6 months after the date of enactment of this Act, develop and implement a retirement financial literacy and education strategy for Federal employees that—

(A) shall educate Federal employees on the need for retirement savings and investment; and

(B) provide information related to how Federal employees can receive additional information on how to plan for retirement and calculate what their retirement investment should be in order to meet their retirement goals; and

(2) submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the strategy described under paragraph (1).

MEASURES READ THE FIRST TIME—S. 2678 AND S. 2679

Mr. FRIST. Mr. President, I understand there are two bills at the desk and I ask for their first reading, en bloc.

The PRESIDING OFFICER. The clerk will read the titles of the bills en bloc for the first time.

The legislative clerk read as follows:

A bill (S. 2678) to ensure that Members of Congress do not receive better prescription drug benefits than medicare beneficiaries.

A bill (S. 2679) to strengthen antiterrorism investigative tools, promote information sharing, punish terrorist offenses, and for other purposes.

Mr. FRIST. Mr. President, I now ask for their second reading, and, in order to place the bills on the calendar under the provisions of rule XIV, I object to further proceedings of these matters, en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108–25

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on July 16, 2004, by the President of the United States:

Protocol Amending Tax Convention with the Netherlands (Treaty Document 108–25.)

I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The President's message is as follows:

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification, the Protocol Amending the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington, D.C., on March 8, 2004. Transmitted for the Senate's information is an exchange of notes with an attached Understanding, which provides clarification with respect to the application of the Convention, as

amended, in specific cases. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol would bring the existing Convention into closer conformity with current U.S. tax treaty policy. As modified by the Protocol, the Convention would be similar to tax treaties between the United States and other developed nations. The Protocol was concluded in recognition of the importance of the United States' economic relations with the Netherlands.

The Protocol would modify the treatment of certain cross-border dividend payments and would modernize the Convention's anti-treaty-shopping provisions. The Protocol also would liberalize provisions in the existing Convention regarding the mutual recognition of each country's pension plans. Other provisions in the Protocol update the Convention to take account of changes in law in the two countries over the last 10 years. The exchange of notes with an attached Understanding provides guidance to taxpayers and each government regarding the intended interpretation of certain provisions of the existing Convention, as amended.

I recommend that the Senate give early and favorable consideration to this Protocol, and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.

HAITI ECONOMIC RECOVERY OPPORTUNITY ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 2261 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2261) to expand certain preferential trade treatment for Haiti.

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

Mr. DEWINE. Mr. President, I am very pleased we are moving forward today with passage of the Haiti Economic Recovery Opportunity Act. Congressman CLAY SHAW in the House and I have been working on Haiti trade legislation for some time. I thank Congressman SHAW for his support. I also want to give my sincere thanks to Senators LINDSEY GRAHAM and ERNEST HOLLINGS. Without their help and support we would not have been successful in our efforts today. Let me take a moment to mention all of our cosponsors as well: Senators BIDEN, BREAUX, CHAFEE, COLEMAN, DASCHLE, DODD, DURBIN, BOB GRAHAM, HAGEL, JEFFORDS, LAUTENBERG, LIEBERMAN, LUGAR, BILL NELSON, GORDON SMITH, SUNUNU, and VOINOVICH. I thank them for their support and their efforts in getting this bill passed.

This bill can really change things for Haiti. Once it is signed into law, it will make a very real, very lasting difference in a country that is the poorest in our hemisphere—and one that has an 80-plus percent unemployment rate and a less than $400 per capita income for individuals.

This bill is going to use trade incentives to encourage the post-Aristide government to make much needed reforms, while encouraging foreign direct investment—the most powerful, and yet underutilized, tool of development. This bill, quite simply, will create thousands of jobs—one of the most important things for the Haitian people right now.

The people of Haiti want to work. They are good workers—they are hard workers. They are industrious. This bill is going to give them the chance to have jobs. It is going to give them a chance at economic recovery through economic opportunity. In the last decade, Haiti has gone from over 100,000 assembly jobs to less than 30,000 today. Our bill helps create jobs by providing duty-free entry to apparel articles assembled in Haiti contingent upon Presidential certification that the new government is making significant political, economic, and social reforms.

The bill also caps the amount of duty-free articles at 1.5 percent of the total amount of U.S. apparel imports, growing to 3.5 percent over 7 years. Currently, Haiti accounts for less than .5 percent of all U.S. apparel imports, and although these provisions seem modest by U.S. standards, in Haiti they are substantial.

This bill is not the ''silver bullet'' for Haiti, because there is no silver bullet for Haiti. Rebuilding Haiti is going to require time, attention, and determination on the part of the people of Haiti, the countries in the region, and ultimately the entire international community. But, passage of the Haiti Economic Recovery Opportunity Act is a powerful indicator that Haiti has the support necessary to move forward.

I yield the floor.

Mr. DODD. Mr. President, I rise today to speak about an initiative that is long overdue. Thanks to the efforts of Senator DEWINE, Senator BOB GRAHAM, and to the other cosponsors of the pending measure, the Haiti Economic Recovery Opportunity, or HERO Act, of 2004 is finally getting the attention it deserves.

Haiti has endured intense strife over the course of the last 3 years. Most recently, floods have devastated much of the country, and armed gangs have destabilized cities and terrorized rural areas, ultimately forcing the elected president from office.

Although much more support will be necessary in the near future, the HERO Act is an excellent first step in the process of establishing stability and security in Haiti.

Unemployment is a major factor in the instability of the country. More than two-thirds of eligible workers cannot find jobs in the formal economy. The HERO Act begins to address that need by providing living-wage jobs in the apparel industry for thousands of Haitians.

Again, I want to stress how important it is to view this as only the first part of a large program to address the abject poverty and political chaos that has beleaguered Haiti. With this kind of forward-looking initiative, we can help our neighbors to overcome these difficult times. Only through concrete and meaningful U.S. assistance on a scale commensurate with Haiti's needs can be ever hope to reverse the misery, suffering, and hopelessness that have become commonplace in the lives of close neighbors—8 million of them.

I strongly support this legislation and was pleased to be a cosponsor. The people of Haiti have waited too long for the HERO Act to become law. It is time for the United States to demonstrate its concern for its suffering Haitian neighbors. Now that the Senate has acted, I hope that the Bush administration will finally make this a priority and urge the House leadership to act on this measure before the August recess.

Mr. FRIST. Mr. President, I ask unanimous consent that the DeWine substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 3565) was agreed to, as follows:

(Purpose: To provide a substitute amendment to ensure violations of laws relating to circumvention are enforced)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Haiti Economic Recovery Opportunity Act of 2004''.

SEC. 2. TRADE BENEFITS TO HAITI.

(a) IN GENERAL.—The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 213 the following new section:

''SEC. 213A. SPECIAL RULE FOR HAITI.

''(a) IN GENERAL.—In addition to any other preferential treatment under this Act, beginning on October 1, 2003, and in each of the 7 succeeding 1-year periods, apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from Haiti shall enter the United States free of duty, subject to the limitations described in subsections (b) and (c), if Haiti has satisfied the requirements and conditions set forth in subsections (d) and (e).

''(b) APPAREL ARTICLES DESCRIBED.—Apparel articles described in this subsection are apparel articles that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns without regard to the country of origin of the fabrics, components, or yarns.

''(c) PREFERENTIAL TREATMENT.—The preferential treatment described in subsection (a), shall be extended—

''(1) during the 12-month period beginning on October 1, 2003, to a quantity of apparel articles that is equal to 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United

States during the 12-month period beginning October 1, 2002; and

''(2) during the 12-month period beginning on October 1 of each succeeding year, to a quantity of apparel articles that is equal to the product of—

''(A) the percentage applicable during the previous 12-month period plus 0.5 percent (but not over 3.5 percent); and

''(B) the aggregate square meter equivalents of all apparel articles imported into the United States during the 12-month period that ends on September 30 of that year.

''(d) ELIGIBILITY REQUIREMENTS.—Haiti shall be eligible for preferential treatment under this section if the President determines and certifies to Congress that Haiti is meeting the conditions of subsection (e) and that Haiti—

''(1) has established, or is making continual progress toward establishing—

''(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

''(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

''(C) the elimination of barriers to United States trade and investment, including by—

''(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

''(ii) the protection of intellectual property; and

''(iii) the resolution of bilateral trade and investment disputes;

''(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through microcredit or other programs;

''(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

''(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

''(2) does not engage in activities that undermine United States national security or foreign policy interests; and

''(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

''(e) CONDITIONS REGARDING ENFORCEMENT OF CIRCUMVENTION.—

''(1) IN GENERAL.—The preferential treatment under subsection (b) shall not apply unless the President certifies to Congress that Haiti is meeting the following conditions:

''(A) Haiti has adopted an effective visa system, domestic laws, and enforcement procedures applicable to articles described in subsection (b) to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States.

''(B) Haiti has enacted legislation or promulgated regulations that would permit the Bureau of Customs and Border Protection verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country.

''(C) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, on the total exports from and imports into that country of articles described in subsection (b), consistent with the manner in which the records are kept by Haiti.

''(D) Haiti agrees to cooperate fully with the United States to address and take action necessary to prevent circumvention.

''(E) Haiti agrees to require all producers and exporters of articles described in subsection (b) in that country to maintain complete records of the production and the export of the articles, including materials used in the production, for at least 2 years after the production or export (as the case may be).

''(F) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, documentation establishing the country of origin of articles described in subsection (b) as used by that country in implementing an effective visa system.

''(2) DEFINITIONS.—In this subsection:

''(A) CIRCUMVENTION.—The term 'circumvention' means any action involving the provision of a false declaration or false information for the purpose of, or with the effect of, violating or evading existing customs, country of origin labeling, or trade laws of the United States or Haiti relating to imports of textile and apparel goods, if such action results—

''(i) in the avoidance of tariffs, quotas, embargoes, prohibitions, restrictions, trade remedies, including antidumping or countervailing duties, or safeguard measures; or

''(ii) in obtaining preferential tariff treatment.''.

''(B) TRANSSHIPMENT.—The term 'transshipment' has the meaning given such term under section 213(b)(2)(D)(iii).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2003.

(2) RETROACTIVE APPLICATION TO CERTAIN ENTRIES.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service before the 90th day after the date of the enactment of this Act, any entry or withdrawal from warehouse for consumption, of any goods described in the amendment made by subsection (a)—

(A) that was made on or after October 1, 2003, and before the date of the enactment of this Act, and

(B) with respect to which there would have been no duty if the amendment made by subsection (a) applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such amendment applied to such entry or withdrawal.

The bill (S. 2261), as amended, was read the third time and passed.

ORDERS FOR MONDAY, JULY 19, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, July 19. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to executive session to consider Executive Calendar No. 603, the nomination of William Myers; provided further, that the time until 5 p.m. be equally divided for debate only between the chairman and ranking member or their designees.

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

THIS WEEK IN THE SENATE

Mr. FRIST. Mr. President, this week we began with the consideration of a constitutional amendment on the institution of marriage, an important dialog, I felt, for this body. We had a good debate on both sides of the aisle on the definition of marriage. I thank my colleagues for keeping the debate on the subject, very civil, and handled in a very respectable way.

I personally was disappointed we did not succeed in getting to the consideration of the text of the amendment. As to the timing of the amendment, people kept questioning again and again, Why did you bring it up now? It was clearly determined by the fact that we had activist judges, beginning in the middle of May, in Massachusetts who radically redefined what marriage over the thousands of years has been interpreted to be.

Right now there are lawsuits pending in 11 other States, and it is just a matter of time before the definition of marriage between a man and a woman will be destroyed in all 50 States. Amending the Constitution to protect marriage is the only viable option left to Congress. It is a debate we did not seek, but it was one that was brought to us by another branch of Government by activist judges who determined what that definition is.

It is important for the legislative branch, directly elected by the American people, to express itself on this issue. We simply are not going to shirk from our responsibility to protect marriage, and we deserve to have a say in the matter. Although we were blocked from bringing it to the floor, I can assure everyone it will be back. The issue is not simply going away.

In addition, we completed last night the Australia free-trade bill, a very important bill managed by Chairman GRASSLEY. The outcome of the vote was 80 to 16 last night on final passage.

The significance of this bill was stated on the floor last night and it centers on the fact that two-way trade between the United States and Australia is at a level of about $28 billion each year. We have a little over $89 billion surplus with Australia, which is the greatest with any nation. More than 99 percent of our exports from Australia will enter duty-free once this agreement goes into effect.

The agreement we approved yesterday in this body is expected to produce an increase of about $2 billion annually in trade for both nations. That means the bill we passed last night will result

in the creation of about 40,000 new jobs in my own State of Tennessee.

Australia is a very important market. Tennesseans exported more to Australia than to France last year. Tennessean companies exported $225 million to Australia, which is approximately a 10-percent increase from 1999.

The bill itself is even more than increasing business opportunities. Australia indeed is one of our most steadfast allies and a key partner in the war on terror. I had the opportunity to talk to the Prime Minister of Australia last night after completion of the bill and thanked him for that support of the broad coalition that has been assembled across the world to fight this war on terror.

Australians have fought beside Americans in every major conflict in the last 100 years, and this agreement strengthens that already close bond forged between two old friends.

Thirdly, this week the Senate took an important step with respect to the FSC/ETI, the JOBS bill, by sending it to conference. The Senate had passed a bill. The House had passed a bill. There had been obstruction to going to conference, but we came to an agreement yesterday and the bill has been sent to conference. It is timely legislation. Every month we do not pass the legislation there is a 1-percent Euro tax or a tariff increase each and every month. It is now at 9 percent. That is unfair. It is unfair to consumers and it is unfair to manufacturers.

Once we work this bill through conference and the President signs it and it becomes law, it will create jobs. So there has been real progress in that regard.

Fourthly, this week we passed H.R. 4363, the Helping Hands for Homeownership Act. This bill came out of the Banking Committee, which is chaired by Senator SHELBY, and it will go to the President's desk.

PROGRAM

Mr. FRIST. As we look ahead to Monday, we will consider the nomination of William Myers to be a U.S. circuit judge for the Ninth Circuit. A few moments ago, I filed a cloture petition on the judicial nomination because of the objection to a time agreement that was expressed from the other side of the aisle. That vote will occur at 2:15 on Tuesday. Therefore, there will be no rollcall votes on Monday. Senators should come to the floor during Monday's session to debate this nomination.

As we all know, next week will be the final week prior to the recess. It will be a very busy week. It should be a very productive week. I ask in advance for everyone's patience and cooperation as we wrap up our work for this legislative period.

ADJOURNMENT UNTIL 1 P.M. MONDAY, JULY 19, 2004

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:45 p.m., adjourned until Monday, July 19, 2004, at 1 p.m.