United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, TUESDAY, APRIL 23, 2002 No. 46

Senate

The Senate met at 10:30 a.m. and was called to order by the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota.

The PRESIDING OFFICER. This morning our guest Chaplain, Chaplain Daniel Coughlin, Chaplain of the U.S. House of Representatives, will lead us in prayer.

PRAYER

The guest Chaplain offered the following prayer:

Lord our God, shepherd us as Your own flock. Speak Your Word in the hearts of all the Senators and to all who work for the Senate Chamber. Make all in the Nation attentive to Your voice; that they may walk as Your free children along the right path, fearing no evil.

On this new day, anoint us with Your Spirit, that only goodness and kindness flow from us. Having invited us to enjoy the banquet of equal justice, may we serve You all the days of our lives. Banish our foes into the darkness of confusion that great deeds of dignity may be accomplished in Your Name; and the nations may dwell in peace for years to come. Amen.

PLEDGE OF ALLEGIANCE

The Honorable PAUL D. WELLSTONE led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 23, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WELLSTONE thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for up to 10 minutes each and with the time equally divided between the two leaders or their designees.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

REQUEST FOR PRAYERS BY THE SENATE CHAPLAIN

Mr. REID. Mr. President, we have been honored this morning with the presence of the House Chaplain. The reason for that is our Chaplain's wife is very ill. She has been in intensive care now for more than a week. Our own Chaplain has expressed to each of us that we should not worry about sending cards or letters or flowers or plants because, of course, the flowers and plants are not allowed in intensive care, but he asked specifically that Members of the Senate pray for his wife.

SCHEDULE

Mr. REID. As you have announced, the Senate will be in a period of morning business until 11:30 a.m. At 11:30 a.m. the Senate will resume consideration of the energy reform bill, when we will vote on cloture on the Daschle-Bingaman substitute amendment. All second-degree amendments to this energy bill must be filed by 11 o'clock today.

The Senate will recess from 12:30 to 2:15 p.m. for the weekly party conferences.

ORDER OF PROCEDURE

Mr. REID. I ask unanimous consent the hour begin running now and the time for the vote occur at 25 minutes until the hour.

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

The Senator from New Mexico.

CLOTURE MOTION ON THE ENERGY BILL

Mr. BINGAMAN. Mr. President, I will yield myself up to 10 minutes to speak in favor of going ahead with the motion for cloture on this bill.

This is the sixth week we have been on the energy bill on the Senate floor. Today is the 22nd legislative day we have worked on the bill. We will be voting this morning on cloture on the substitute amendment that was first laid down on February 15. It was modified to its present form on March 5.

Since then, we have had a great many amendments. We have acted on 84 amendments to the substitute amendment. Of those 84 amendments, 68 were adopted, 9 were defeated or otherwise fell, and 7 were withdrawn.

Seven other amendments are currently pending on the bill.

One would think that dealing with 84 amendments on a bill would represent fairly good progress on a bill, and in many ways it does. We have taken up almost all the major issues on the bill, and they have been disposed of with very few exceptions. I appreciate the help of Senator MURKOWSKI and others who have been active in this debate, trying to move this set of issues along and to move the legislation along.

At the same time, we have had many days when Senators have not been willing to come to the Chamber and offer amendments. We have had periods when Senators have delayed votes on their amendments and been anxious to wait until conditions seemed more favorable before a vote would occur on their amendments.

If we in fact were out of amendments, obviously that would be good news. The truth is, yesterday at the time of the filing deadline that was triggered by the cloture process, there were 115 additional amendments filed. Some of those amendments are variations on earlier amendments that have been filed. Some are variations on others that we understand can be handled. Clearly, we still have a substantial number of issues that Senators believe they need to have considered.

I am also disappointed that our efforts to get unanimous consent on a finite list of amendments have been blocked. We have asked unanimous consent several times on the Senate floor to get agreement, not on time limits—we had never got to the stage where we were asking for time limits—but first, before we asked for time limits on amendments, we were trying to get a finite list of amendments. The effort to get that has been blocked. Even adoption of amendments that both managers of the bill have been willing to clear has been a problem for us.

So we have not had, in my view, the cooperation we need to bring this bill to conclusion. We need to have that change quickly if we are going to continue on the bill and conclude action on it.

I know there is great concern as we approach this cloture vote about the tax-related provisions. I strongly support those provisions, the tax incentive provisions that were voted out of the Finance Committee on February 28. I supported those. I believe they are dramatically better than the tax-related provisions that were attached to the House-passed energy bill last year.

The argument was made yesterday that the Senate should now think of this bill as some sort of omnibus tax bill. I think that would be a big mistake, for us to now look on this measure as the major tax bill of the year and see this as an opportunity for all Senators to come and offer all sorts of provisions relating to taxes, particularly those that do not relate to energy taxes. I think that would be a very major mistake.

This is not an omnibus tax bill. It is an energy bill. We need to bring debate on the bill to a close. I hope we can do so with tax provisions included. I know the Senator from Montana has tried to get unanimous consent to do that. I support us doing that, having the provisions coming out of the Finance Committee brought up, debated, and voted on. But clearly we need to keep in context that this is not the major tax bill the Senate is going to consider in this Congress, and therefore it should not be a vehicle for all sorts of non-energy-related tax proposals.

I compliment our majority leader, Senator DASCHLE, for the enormous amount of floor time he has committed to trying to pass this bill. A lot of speeches have been made over the last several months implying that our majority leader was not committed to moving an energy bill through this body.

His actions speak much louder than words and the rhetoric around here. It is clear from his actions and committing 5 weeks of the Senate's time to this important issue that he is committed to trying to get an energy bill through the Senate.

I also appreciate the strong support that Senator LOTT has been providing in trying to move to cloture and move ahead with invoking cloture and completing action on the bill. I think that is very important as well.

Energy is a central policy concern in the Senate in this session. It is appropriately so. Our President has made it an agenda item for the country. Many of us have felt strongly that there are provisions in this bill that should be enacted into law. I hope we can do so. If you exclude Mondays and Fridays from the calculation, we now have 15 working and voting days between now and the Memorial Day recess. Clearly, there is a limit as to how much of the Senate's time we can devote to this very important issue.

I hope all Senators will support the effort to invoke cloture on the substitute amendment. Even if cloture is invoked, there are several hard fought battles still to be waged on particular amendments that have been offered and that will remain germane.

I believe we have reached a point where further debate should be limited to germane amendments. For that reason, I urge Senators to support the motion to invoke cloture.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. REID. Mr. President, the majority controls 30 minutes. I do not know if the minority wishes to use any of their time. It is my understanding that Senator BAUCUS wishes to give remarks in opposition to cloture. Is that true?

Mr. BAUCUS. At this point.

Mr. REID. Mr. President, I am happy to yield 5 minutes to the chairman of the Finance Committee, Senator BAUCUS.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I will suspend my statement at this time if someone else wishes to speak.

Mr. REID. Mr. President, the Senator from Nebraska wishes to speak on a subject not related to cloture. I yield 5 minutes to him.

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

Mr. NELSON of Nebraska. Mr. President, I thank my colleague and friend from Nevada for giving me this opportunity.

RENEWABLE FUEL STANDARD

Mr. NELSON of Nebraska. Mr. President, as we proceed with the debate—and hopefully it will end with a cloture vote—on the renewable fuel standard in S. 517, it is important to clarify some of the main issues and to counter some of the misinformation that has been offered by opponents of ethanol and other biofuels and the RFS.

In today's New York Times, one of our colleagues is quoted as saying that the renewable fuel standard may raise the cost of gasoline by 10 cents a gallon in New York. I am not sure how that number is achieved given the fact that the wholesale price of ethanol today in New York is about 30 cents per gallon less than gasoline.

But it is frustrating. For 25 years, we have all worked to ward off the negative arguments presented by some of the opponents. The opponents are determined to maintain control over the transportation fuels market by excluding ethanol, by excluding reformulated fuels, and by excluding new opportunities for renewable resources. Yet because the ethanol industry is right for America and for our State, it has survived and expanded from essentially zero in 1977 to over 2 billion gallons a year capacity today.

It has taken sound public policy to achieve this strength and it will take sound public policy to take the next leap forward in these days of dangerous and growing foreign oil dependency and mounting concerns about the environment including climate change. The RFS is the next sound and critical policy leap forward to more than double biofuels production in the next 10 years.

In recent years, an enlightened sector of these industries ha accepted the benefits of ethanol blends. But the remaining and commanding sectors stand steadfast in their opposition. Old data, negative projections, and misinformation are their tools.

They have convinced some to actively embrace their campaign to maintain a fossil-interest stranglehold on transportation fuels. For these companies, national energy, economic and environmental security of the United States is not part of their global calculus as they pursue their determined path against ethanol and other biofuels. These biofuels are becoming an international force. If opponents

can delay the United States in its embrace of the biorefinery concept, they will succeed in sustaining the position and profitability of their industry.

I will address the opponent's arguments issue by issue. It is my hope that, ultimately, an objective and thoughtful overview will lead to acceptance of the Renewable Fuel Standard.

I would first like to stress the urgent needs for a ''Manhattan'' type project to commercialize the biorefinery industry in the United States. This industry will take agricultural and forestry crops and residues, rights-of-way, park, yard and garden trimmings as well as the clean portion of municipal wastes that are disposal problems or end up in the our land fills or sewers and convert these renewable resources into biofuels, biochemicals and bioelectricity.

Poster 1 shows existing ethanol plants in gold, plants under construction in green, and other biorefineries in the planning stage in red.

You can see that the dispersal of biorefineries will be nationwide, not limited to the Midwest, and not limited to any location or region within our country.

Moving from planning to construction is largely contingent on implementation of the RFS since capitalization will not proceed without an assured and profitable market for their outputs.

America needs a Manhattan-type project to accelerate this process and to ensure the development of smaller, fully integrated, community-based biorefineries bringing new basic industries and quality jobs to rural and urban communities with ownership/partial ownership and value-added benefits accruing to local people. The RFS is part of this approach because it expands the market for biofuels and provides a 1.5 credit for cellulosic biomass ethanol and biodiesel compared to 1 credit for corn-based ethanol; that is, each gallon of ethanol from cellulosic biomass will be worth 1.5 gallons of corn-based ethanol. This extra credit is an important driver in advancing technology so that California, New York, and other States can join the Midwest in benefiting from new industries, better jobs, and improved incomes.

The ACTING PRESIDENT pro tempore. The Senator's 5 minutes has expired.

Mr. NELSON of Nebraska. Mr. President, we hope the cloture vote will move forward and that we will, in fact, pass the RFS.

Thank you very much.

ORDER OF BUSINESS

Mr. DASCHLE. Mr. President, I have been in consultation with the distinguished Republican leader and our terrific chair of the committee, as well as others, with regard to finding some procedural arrangement to accommodate Senators and continue the effort to bring this bill to a close.

I think we are making progress, but in order to accommodate further discussion, I ask unanimous consent that the cloture vote be postponed until 2:30.

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

Mr. DASCHLE. I thank the Chair. I yield the floor.

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

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

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the time during quorum calls in this period be charged equally against both sides.

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

Mr. BINGAMAN. Mr. 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. BAUCUS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BAUCUS. Mr. President, what is the pending business?

The ACTING PRESIDENT pro tempore. The Senate is in morning business.

Mr. BAUCUS. I thank the Chair.

FINANCE COMMITTEE TAX INCENTIVES

Mr. BAUCUS. Mr. President, the cloture vote has been suspended until 2:30 this afternoon. I think that is very wise. There are a few provisions that various Senators are trying to work out. I hope very much that they are worked out.

One of the big provisions is the Finance Committee-passed tax package which I believe members of the Finance Committee believe very much should be part of this bill.

The Finance Committee has worked long and hard on tax provisions to help wean America from OPEC. They are not huge incentives, but on the margin they will help a bit. They are divided roughly equally between conservation incentives on the one hand and production incentives on the other. The conservation incentives are renewable energy provisions. For example, they extend and modify what is called the section 45 credit.

In addition, the alternative fuels and alternative-fuel vehicles credit is to help America develop automobiles that are much more fuel efficient so we will consume fewer gallons of gasoline for every mile driven. There are a lot of great ideas, whether hybrids or fuel cells, but it is important to give those incentives.

There are also some conservation and energy-efficiency incentives for energy efficiency in existing homes, for new home construction, a credit for residential solar, for example, wind, fuel cell properties, a credit for more efficient air-conditioners, water heaters, heat pumps, and the list goes on. That is the conservation side. As I said, it is about half of the total package.

The tax incentives for 1 year total about $8 billion and over the life of the bill—that is 10 years—$14 billion. Half of that, as I mentioned, is renewables and conservation. The other half is production incentives. The production incentives are for clean coal technologies. We know we can utilize coal significantly in the future. It makes sense that we use cleaner technologies so that there is less pollution. There are oil and gas conventional incentives as well as some electric industry restructuring incentives.

I might say, for our Native Americans on Indian reservations, we have provided accelerated depreciation and wage credit benefits for businesses that are on Indian reservations. This provision was thrashed out in committee. It passed out of the committee unanimously, albeit on a voice vote.

I believe that, by and large, most Members of the Senate support—and support strongly—these provisions. They do help, on the margin, wean us a bit from our dependency on OPEC because they provide a little more self-sufficiency and have actual, honest to goodness provisions; that is, the myriad of conservation measures I mentioned.

I take my hat off to our leader Senator DASCHLE, to Senator REID, and to Senator LOTT for trying to figure out ways to put this together so we can finally pass the energy bill. It is an almost impossible situation. You have 100 Senators, each with a different point of view. But as to the Finance Committee provisions, by and large, the President proposed many of them in his proposed energy tax package. Senator BINGAMAN, chairman of the Energy Committee, has proposed energy tax incentives. Senator MURKOWSKI has proposed energy tax incentives. That is some indication why we in the Finance Committee passed this measure out unanimously.

It is bipartisan by definition. It is broad based, but it is not germane, obviously. That is why I hope we can get the agreement in some responsible fashion to take up and pass the Finance Committee package in a posture so it will be included in the bill, that it is not excluded perhaps because cloture is invoked, therefore making the provision not germane.

It is a good provision, the Finance Committee package. I think it is also important we pass it because there may be scoping issues in conference. I

cannot guarantee 100 percent, just because the House has about $30 billion in tax incentives, that necessarily any provision the Senate has in mind would be within the scope; it may not be.

Second, if we do not pass our energy tax incentive package, we will be disadvantaged in negotiating with the House. The House will have passed $33 billion, the Senate zero. One can argue, look at what is in the Finance Committee package, but I can tell you, having worked with the chairman of the Ways and Means Committee in conference many times, I know what he is going to say. I know it is going to give him a leg up. It is going to give him an advantage. And it is going to make it more different for us in the Senate to get provisions we want.

Third, that is no way to operate. The Finance Committee has done its business. We had many hearings. We have had a markup. We have debated these issues. We passed out our provision incentives to add, to complement—in fact, supplement—the underlying energy bill. We waited until the rest of the bill was about ready to pass to bring up our package. I think it is only appropriate—in fact, it is for the good of the country, definitely—that these provisions be included.

So with great respect I urge all my colleagues, in the next couple hours, to help all of us together, as 100 Senators, figure out a way we can bring up and pass the Finance Committee tax incentives. They are good. They are good for America—half conservation, half production. I think it is basically by and large agreed to.

I yield the floor.

EXTENSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The majority whip.

Mr. REID. Mr. President, I ask unanimous consent that the morning business be extended until the hour of 12:30 and that there be no controlled time, and that Senators be allowed to speak for up to 10 minutes each.

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

Mr. REID. Mr. President, I further ask unanimous consent that the time from 2:15 to 2:30 be equally divided with the time controlled by Senator DASCHLE or a designee and Senator LOTT or a designee to debate the cloture vote which will occur at 2:30.

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

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

The PRESIDING OFFICER (Mrs. FEINSTEIN). Without objection, it is so ordered.

THE MIDDLE EAST

Mr. WELLSTONE. Madam President, I have about only 5 minutes to speak on an issue that is important for all of us in our country and in the world. That is the Middle East. There is much to say, and 5 minutes is just a beginning.

We were not in session on Friday so today I will briefly present my analysis of Secretary Powell's trip. There was a lot of discussion in some of the media that Secretary Powell was unsuccessful in his endeavor. I actually choose to view his effort as but a first step. It is extremely important—I know the Chair believes as well—that our Government be engaged, even more so now.

Secretary Powell's trip was an important first step. There are now discussions under way, very tough discussions, about security measures. Ultimately, the question is, how do we get from where we are right now to where we all hope we can be so that there can be peace for Israel and for her neighbors? That is the question. The emotion people feel, the sentiment people feel, that I feel, that all of us feel, is very vivid.

When Israelis were murdered at a seder meal, as a first-generation American of a Jewish immigrant who fled persecution from Russia, it sent chills down my spine. When I read about the rise of anti-Semitism in Europe, some of what has happened in France, the targeting of Jewish teenagers, the physical attacks, the hatred, it is frightening. Inside, you feel the indignation, and you say to yourself: We will not let people do this to Jews anywhere in the world.

I called Assistant Secretary Wolfowitz, who spoke at the rally, and said: We also have to be concerned about the loss of life of innocent Palestinians—not terrorists, innocent Palestinians. He is right. I called him and said: I believe, based upon my own background, when I think about my mother and father, who are no longer here, what you said should have been said. I think it was important to say that. It is a very Jewish thing to say in terms of my sense of Jewish justice. I can't imagine my mother and father not saying exactly the same.

I thank Secretary Powell for his trip. Clearly, it takes courage to do what he did. He is out there. Frankly, he is doing the right thing. I believe now, however, we have to come forward with some very creative political ideas about how we can move to some kind of framework. It seems as if the present course will result in a deeper river of blood. How can we get to some kind of a framework that makes some sense so that we can get to where we want to get, which is people living in dignity side by side, with secure borders, and an end to the killing. That is, how do we get there?

I wish I had the answer. Secretary Powell needs to go back. I don't know whether he thinks I should be saying this in the Senate, but we will need him to go back. Our government has to stay engaged in these negotiations.

Over the next couple of days, I will try to talk about some of the discussions I have had with people about ways in which we can move to a different framework—not the present course but a different course. It is terribly important. I am not naive about this. It is very complicated, and it is very difficult.

Since we were not in session Friday, I didn't want to let some of the interpretation of Secretary Powell's work be the only interpretation. Again, the emotion we feel and the indignation that many of us have is quite understandable. The real question is, how can we be constructive? What can we do gestaltwise that makes sense? What kind of proposals can we propose that are credible, that somehow will result in a place and time when Israel lives in peace and Israel's neighbors also live in peace. That is the question.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska is recognized.

THE ENERGY BILL

Mr. MURKOWSKI. I thank the Chair.

Madam President, I want to take a moment to discuss where we are currently in the continued movement on the energy bill.

A cloture motion was filed last Thursday, and we are looking forward to moving forward on this bill. I know many Members have been somewhat frustrated with the pace. We have been on the bill almost 6 weeks, not continually but certainly for the most part.

I know the majority leader is working in good faith, and I support his efforts to move the bill forward in a timely manner, but I remind my colleagues that we are on an extremely difficult and complex piece of legislation. We have divisive issues, and we have dealt with them as best we could through a process of amendments.

Since the debate on this issue began, we have had 172 amendments—some 60 Republican, 112 Democratic. We have dispensed with 92 amendments—35 Republican, 57 Democratic. Most of the remaining amendments are currently on the other side of the aisle, but that is neither here nor there. I am sure we can deal with them in a relatively short timeframe.

Some of the more difficult amendments we have dealt with are: Whether Congress should decide on new vehicle standards or leave that discretion to the experts, specifically CAFE standards; whether Congress should impose a renewable portfolio standard on some

electricity producers or leave the decision on appropriate renewable portfolio standards to the States; whether the Federal Government should continue the liability and introduce protection on our nuclear plants; that is, Price-Anderson. I think the sustainability and expansion of the nuclear industry certainly represents protection on that particular issue of limiting the liability for the industry if we are ever going to get nuclear power generation in this country. Further, how best to ensure reliability on our electricity grid—that was the reliability issue and significant progress was made on that—and whether to create a renewable fuels requirement, ethanol.

Our work is not complete. There are still many significant issues to resolve. We need to close out the issues dealing with electricity. We need to reach some agreement on the massive climate change provision in the bill. We must address the tax provisions for renewables, conservation, alternative fuels, efficiency, and production. We need to decide how best to increase our domestic production of energy sources since there are no real production provisions in the substitute we have before us.

On the issue of supporting cloture, a vote in favor of cloture would cut off any opportunity to adopt a rational tax component on energy legislation, which I believe is so important in this package—taxes that would encourage the use of renewables, alternative fuels, increase our efficiency relative to conservation, increase our production of conventional fuels.

As far as oil is concerned, as this bill now stands, there is not one single provision that would increase our domestic production of oil because the tax package is not part of the bill at this time.

There are numerous studies and authorizations regarding oil production in title VI but no specific new production. As it stands now, this measure, in my opinion, is neither balanced nor comprehensive. In fact, many provisions in the legislation specifically exclude production of oil from the energy incentives.

The irony is that while there are provisions in the bill dealing with wind, solar, and biomass, these energy sources are not currently threatened by events around the world. I know of no world leaders calling for—or with the ability to—cutting off our wind supply or our Sun, although Saddam Hussein may be up to it. In any event, we are at a time when many in the Arab world are calling for using oil as a weapon against the United States.

We have seen today a release from Iraq where Saddam Hussein is quoted as indicating he will pay $25,000 for any of the Palestinians who may have lost their homes in the Israeli-Palestinian conflict. That comes after a previous statement by Saddam Hussein about providing payment to the survivors and family members of any of the individuals who saw fit to strap themselves with bombs and be used to initiate terrorist attacks associated with the issue in Israel, providing $25,000 to their families. I think that clearly is an incentive that those of us in the Western world find totally unacceptable and reprehensible.

As some in this Chamber may recall, on Thursday we passed, by a vote of 88 to 10, a sanction against Iraqi oil. The logic for that was the very fact that Saddam Hussein had seen fit to foster terrorism by providing incentives for human beings to be used as bombs in crowded areas. Furthermore, a justification for that deserves another reflection because we also saw several years ago sanctions against Libya, and the sanctions against Libya were justified because of terrorist attacks associated with the downing of the Pan Am flight over Scotland. Previous to that, we had initiated sanctions against Iraq under the same rationale. The attack on our U.S. Embassy in Iran is evidence of the country fostering terrorism.

So for anyone, including the administration, who might be critical of the action taken by the Senate, I remind them there is a principle involved, as our President stated on numerous occasions, that we will not stand by and let anyone or any country or any leader foster terrorism or use it as an incentive. That, clearly, is the case with Saddam Hussein. Hence, I think the action by the Senate last Thursday was most appropriate in terminating any imports of oil from Iraq.

So as we recognize today, again, some in the Arab world are calling for using oil as a weapon against this country. They do this at the same time they use the hard currency revenues from our dependence on their oil to fund homicide bombers and state-supported terrorism.

We must protect ourselves, and the tax title in the bill would help to slightly rectify this by providing incentives for marginal oil production, and heavy oil production as well, which would decrease our dependence on imported oil.

In the area of natural gas, we do have a provision dealing with the Alaskan natural gas pipeline and the underlying provisions in the development of that gas. The majority has indicated they recognize this is a provision that would create somewhere in the area of 400,000 jobs. However, as it currently stands, the provision would not create one job if cloture is invoked.

So without any real economic security, the project, of course, may not become a reality. I am sure we are all aware of this, but I certainly cannot agree to have moved this position this far and not see it completed.

In the interest of moving forward—I know the majority leader wants to move forward, and the minority leader as well. I understand that amendments involving the death and estate tax complicated the efforts. Certainly, cloture would end that provision. However, I think there is a better way. I propose we try to enter into a unanimous consent agreement—I understand there has been a shot at it now—that would limit the number of remaining amendments to be debated on energy-related amendments and limit that number by first-degree amendments. These would be specific amendments so the issue of germaneness would not come up.

If we are able to get such an agreement, I believe we could be off this bill by the end of the week. I would certainly be willing to work toward that end. Of course, it is not going to be an easy task. We still have the divisive issues of climate change to deal with, but I think it is possible to do that.

My purpose is to pledge my support to improve the legislation before us and get a bill to the President as soon as possible. I urge my colleagues to recognize the weight of the task before us to push aside some of the personal agendas and do what is right for the Nation, and that is to adopt an energy policy as developed in this bill by an amendment process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

GLOBAL WARMING

Mr. CARPER. Madam President, today marks, I believe, the 6th week during which we have been debating the energy legislation that is before us. In my own view, among the bills we will debate and discuss and vote on this year in this Chamber, few, if any, are as or more important.

I am encouraged there is a growing likelihood we actually may vote on cloture and begin to reduce the scope of the amendments and the amount of time that remains for this critical debate, to get to final passage, and hopefully to enter a conference with the House and provide a compromise the President can sign into law.

It is in our naked self-interest as a nation to finish our work and to do so with some dispatch. We have heard countless times about our growing dependence on foreign sources of oil, which is now approaching 60 percent. We have heard concerns from a number of Members related to the trade deficit our Nation continues to run, a trade deficit that exceeded $400 billion last year and roughly a third of which is attributable to the oil we import.

I will take the next few minutes and share one other reason why we should feel a sense of urgency in passing this legislation and attempting to finalize a compromise with the House and the administration. That deals with what is happening in the atmosphere of our Earth: global warming.

This past Saturday, in Wilmington, DE, the annual Commonwealth Awards were bestowed upon a variety of some of the most famous, remarkable people in the world. Among the people who received the Commonwealth this past

weekend were a husband and wife team who are researchers who work out of Ohio State University in Columbus, OH. Their names are Dr. Lonnie Thompson and Dr. Ellen Mosley-Thompson.

I ask unanimous consent the full statement of Calvert A. Morgan, who presided at that event, be printed in the RECORD.

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

REMARKS OF CALVERT A. MORGAN

The issue of global warming has been vigorously debated for the past two decades. Is the climate on Earth getting dangerously warmer, and if so, is modern-day air pollution to blame? While many have exchanged rhetoric on the matter, two American researchers have trekked to the world's remote ice fields to dig for answers.

Dr. Lonnie Thompson and Dr. Ellen Mosley-Thompson are husband-and-wife collaborators who study climate change and global warming. They have spent the past 25 years collecting and analyzing ice cores extracted from glaciers on the five continents.

Their research has yielded a remarkable and priceless archive of the earth's ancient climate.

What's more, their findings offer some of the most convincing evidence yet that global warming is real, and human activity is a contributing factor.

For their work in deciphering the Earth's frozen history and its implications for our future, PNC honors these world-class scientists with the 2002 Common Wealth Award for Science and Invention.

The Thompsons conduct their work at the Byrd Polar Research Center at Ohio State University.

Dr. Lonnie Thompson is a professor of geological sciences. He has led some 40 international expeditions to collect ice cores from the mountains of Africa, South America and Asia. Dr. Mosley-Thompson is a professor of geography. She has led similar field programs to Greenland and Antarctica.

To understand the earth's past and present climate, our honorees and their research teams analyze the chemical and physical properties preserved in ice cores.

Lonnie Thompson's research is unique because it focuses on the ice fields of the tropics and sub-tropics instead of polar ice. He believes the hottest part of the globe is crucial to understanding global warming. Tropical glaciers, he says, are ''the most sensitive spots on Earth'' and serve as ''an indicator of the massive changes taking place'' in today's global climate.

But to find ice in the tropics, you have to climb pretty high. The physical and logistical challenges of this high-altitude research are staggering. First, there's the climb to a nearly inaccessible mountaintop with about six tons of equipment in tow.

Once the team gets to the expedition site, the challenges continue. Equipment maneuvers over crevasses, the danger of avalanches, frigid temperatures, thin air and frequent windstorms are all part of a day's work.

While six tons of equipment go up the mountain, 10 tons come back down when you add four tons of ice samples. Dr. Thompson has experimented with bringing the ice down in his hot air balloon, the Soaring Penguin. Most often, however, each core sample is carried by hand in an insulated box and brought back to laboratories at Ohio State University for analysis.

For our honorees, the thrill of discovery far outweighs the occupational hazards. For instance, a 1,000-foot-long ice core, drilled from the Tibetan Plateau, reveals China's climate history for the last 130,000 years. An ice core record of this length from the subtopics is unprecedented.

New cores from two sites in central and southern Tibet reveal that the past 50 years have been the warmest in the last 10,000 years in that part of the world.

Using two decades of ice core data and aerial mapping, the Thompsons offer proof that the world's tropical glaciers are melting faster and faster as the years pass.

The icecap on Mount Kilimanjaro, Africa's highest peak, has lost 82 percent of its area since it was first mapped in 1912. One-third of the area has disappeared just since 1989.

Based on this dramatic evidence, Lonnie Thompson predicts that the snow cap of this storied mountain will be gone by 2020. He says the same fate awaits other mountain ice caps in Peru and around the world. These vanishing glaciers ''will have a massive effect on humanity,'' he says, posing an urgent natural and economic threat around the globe.

The Thompsons believe that it is already too late to save the tropical glaciers. Now, they race against time, gathering more core samples before Earth's frozen history is lost forever.

Ladies and gentlemen, please join me in showing our esteem to these dedicated and courageous scientist, Dr. Lonnie Thompson and Dr. Ellen Mosley-Thompson, winners of the 2002 Common Wealth Award for Science and Invention.

Mr. CARPER. I would like to share some excerpts of it today during my own remarks:

The issue of global warming has been vigorously debated for the past two decades. Is the climate on Earth getting dangerously warmer, and if so, is modern-day air pollution to blame? While many have exchanged rhetoric on the matter, two American researchers have trekked to the world's remote ice fields to dig for answers.

Dr. Lonnie Thompson and Dr. Ellen Mosley-Thompson are husband-and-wife collaborators who study climate change and global warming. They have spent the past 25 years collecting and analyzing ice cores extracted from glaciers on the five continents.

Their research has yielded a remarkable and priceless archive of the earth's ancient climate.

What's more, their findings offer some of the most convincing evidence yet that global warming is real, and human activity is a contributing factor. . . .

Dr. Lonnie Thompson is a professor of geological sciences. He has led some 40 international expeditions to collect ice cores from the mountains of Africa, South America and Asia. His wife, Dr. Mosley-Thompson, is a professor of geography. She has led similar field programs to Greenland and Antarctica.

To understand the Earth's past and present climate, our honorees and their research teams analyze the chemical and physical properties preserved in ice cores.

Lonnie Thompson's research is unique because it focuses on the ice fields of the tropics and sub-tropics instead of polar ice. He believes the hottest part of the globe is crucial to understanding global warming. Tropical glaciers, he says, are ''the most sensitive spots on Earth'' and serve as ''an indicator of the massive changes taking place'' in today's global climate.

Cores have been drawn from mountain tops from throughout the world.

New cores from two sites in central and southern Tibet reveal that the past 50 years have been the warmest in the last 10,000 years in that part of the world.

Using two decades of ice core data and aerial mapping, the Thompsons offer proof that the world's tropical glaciers are melting faster and faster as the years pass.

The icecap on Mount Kilimanjaro, Africa's highest peak, has lost 82 percent of its area since it was first mapped in 1912. One-third of the area has disappeared just since 1989.

Based on this dramatic evidence, Lonnie Thompson predicts that the snow cap of this storied mountain will be gone by 2020. He says the same fate awaits other mountain ice caps in Peru and around the world. These vanishing glaciers ''will have a massive effect on humanity,'' he says, posing an urgent natural and economic threat around the globe.

I think it is important, as we come to the end of the debate on this energy bill, to remind ourselves that, yes, indeed, we import entirely too much oil from around the world from people who do not like us, in some cases, and who, I am convinced, use the resources we send to them to hurt us. I think it is important that we remind ourselves of the economic trouble we create for America by a growing trade deficit, a third of which is attributable to our dependence on foreign oil, on imported oil.

Lost in this discussion are the points that Drs. Thompson have made, of which we were reminded in Delaware just this last Saturday; that is, there is global warming. The climate of the Earth has changed and is changing more rapidly as time goes by. Fully one-quarter of the carbon dioxide that we put into the air comes from the cars, trucks, and vans we drive.

As we prepare to approach the end of this debate, I hope we will not only have done something to reduce our reliance on foreign oil, not only done something to reduce our growing trade deficit, but that we will have taken affirmative steps to reduce the amount of carbon dioxide we are putting into our atmosphere, that literally is destroying the icecaps of Mount Kilimanjaro and any number of other mountains throughout our tropics and subtropics.

I used to think global warming was a figment of somebody's imagination. I don't see how any of us anymore can say that is the case. It is real. It is here. It is imminent. It is something we can do something about, and we need to do that in the context of this energy bill. I hope we will.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Before the Senator from Delaware leaves the floor, I would like to say, the Senator from Delaware and I came here from the House of Representatives together in 1982. The Senator has always been very studious. What I mean by that is that legislation is something he reviews and studies and I am sure worries about. This legislation now before the Senate is no different.

The Senator from Delaware is concerned, as he has indicated, with the need for an energy bill. We had a vote on an issue that is of extreme importance to the country. It did not go the

way a lot of us believed it should. The Senator from Delaware is coming back at such time as I hope he can offer this amendment, with something on which he has spent hours and days, coming up with something that is reasonable and will meet many of the goals that need to be met, allowing the United States to become less dependent on production.

I say to my friend from Delaware, I am very glad he is in the Senate. He has brought to the Senate the same style that he had in the House of Representatives and, I am sure, to the office of Governor, although I am not as aware of his work as a two-term Governor of the State of Delaware. But he has brought, really, a fine dimension to the Senate. I am proud of the work he has done, as should be the people of Delaware.

Mr. CARPER. If the Senator will yield, I say to my friend, our assistant majority leader, those words mean more than you know. I have been called any number of things as Governor, as a Member of Congress, and as a Member of the Senate, and studious is one of the kinder and more generous.

It is an honor to work with the Senator. I thank him for his leadership.

The PRESIDING OFFICER. Who yields time? Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Resumed

Mr. BAUCUS. Madam President, I ask unanimous consent that the Senate go into legislative session and that the energy bill be the pending business.

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

The clerk will report the bill by title.

The senior assistant bill clerk read as follows:

A bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Dayton/Grassley amendment No. 3008 (to amendment No. 2917), to require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available.

Landrieu/Kyl amendment No. 3050 (to amendment No. 2917), to increase the transfer capability of electric energy transmission systems through participant-funded investment.

Schumer/Clinton amendment No. 3093 (to amendment No. 2917), to prohibit oil and gas drilling activity in Finger Lakes National Forest, New York.

Dayton amendment No. 3097 (to amendment No. 2917), to require additional findings for FERC approval of an electric utility merger.

Feinstein/Boxer amendment No. 3115 (to amendment No. 2917), to modify the provision relating to the renewable content of motor vehicle fuel to eliminate the required volume of renewable fuel for calendar year 2004.

Murkowski/Breaux/Stevens amendment No. 3132 (to amendment No. 2917), to create jobs for Americans, to reduce dependence on foreign sources of crude oil and energy, to strengthen the economic self determination of the Inupiat Eskimos and to promote national security.

Reid amendment No. 3145 (to amendment No. 3008), to require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BAUCUS. Madam President, I appreciate the recognition. If no further statements are to be made at this time, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREMENT—H.R. 8

Mr. DASCHLE. Madam President, throughout the morning we have attempted to find ways to move the process along. I thank a number of Senators on both sides of the aisle for their cooperation. We are at a point now where procedurally I think we are in a position to move forward. We will make a unanimous consent request following this one having to do with amendments to the energy bill. But that is a separate matter. This has primarily to do with the question of estate taxes.

I ask unanimous consent that when the Senate considers Calendar No. 33, H.R. 8, the estate tax bill, no later than June 28, the only amendments in order are as follows:

Senator GRAMM of Texas, an estate tax amendment; the majority leader, or his designee, an estate tax amendment which shall be subject to two second-degree amendments to be offered by Senator DASCHLE, or his designee, with Senator DASCHLE's amendment being the first one offered; that all of the above amendments deal solely with the subject of estate tax; that all of the above estate tax amendments be subject to a 60-vote Budget Act point of order and that no other amendments or motions be in order to the bill, except motions to waive the Budget Act; and that if any of the above amendments, after each has had its motion to waive vote, is adopted, the bill be read a third time and the Senate vote on final passage of the bill without any intervening action or debate, and that if none of the amendments achieve 60 votes to waive the Budget Act, the bill be placed back on the calendar; further, that there be 2 hours for debate on each of the above amendments equally divided in the usual form; further, that upon the granting of this consent, Senator BAUCUS be recognized to offer the Baucus-Grassley Finance Committee tax amendment to the energy bill, and that the amendment be agreed to and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. DASCHLE. Madam President, let me just say, it is the intention of Senator LOTT and me to offer the unanimous consent request shortly which would make in order a number of amendments pertaining to the energy bill that, hopefully, will bring us to closure.

What we have done in this case is simply agree to a debate on the estate tax legislation sometime prior to June 28. Senators will have an opportunity to debate the estate tax bill. I know there is a great deal of interest on both sides of the aisle.

We will also now entertain the Baucus amendment as it relates to the tax provisions of the energy bill. All Senators, of course, still retain their right to offer amendments on taxes prior to cloture.

Madam President, I yield the floor and thank all of my colleagues for their cooperation.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

AMENDMENT NO. 3286 TO AMENDMENT NO. 2917

(Purpose: To provide energy tax incentives)

The PRESIDING OFFICER. Under the previous order, the pending amendments are set aside.

The clerk will report the Baucus amendment.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN, proposes an amendment numbered 3286.

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

Mr. BAUCUS. Madam President, this amendment consists of the energy tax incentives reported by the Finance Committee.

Let me explain why this amendment is necessary.

The short term energy crisis has ended. But the long term problem has not.

Earlier this year, at a House hearing, Energy Secretary Abraham summed up the energy situation. He said that ''Over the last 12 months we have seen energy supply shortages, natural gas and gasoline price spikes in the Midwest and California, and terrorist attacks within our borders.''

He was right on target. His words emphasize that energy independence matters. It matters to our economy, to our national security, and to the well-being of average American families.

Take one example. Gas prices.

Remember last summer. The price was $1.70 per gallon. A record high.

Just 6 weeks ago, the national average retail price for gasoline was $1.14 per gallon.

Since then, gas prices have climbed again. Today, the national average price is back up to $1.42 per gallon.

Over the past several years, prices have been extremely volatile.

This volatility has had a sharp economic effect, disrupting businesses and lives.

Here is why. The difference between $1.14 per gallon and $1.70 per gallon is 56 cents per gallon.

The average household uses about 1,100 gallons of automobile gasoline a year. All else being equal, that amounts to a swing in household fuel expenditures of more than $600, just for transportation.

That is like a $600 tax increase, on every American family.

For a small business, the economic impact of these price swings can be even worse.

And the situation is not likely to improve anytime soon.

Between now and 2020, worldwide demand for oil is projected to increase from 76 million barrels a day to nearly 120 million barrels per day. That's an increase of almost 60 percent.

Clearly, the more we depend on only one source of energy, the more we are subject to price fluctuations.

With that background, let's turn to the legislation.

The chairman of the Energy Committee, Senator BINGAMAN, has designed the underlying energy legislation that is the basis for our energy policy.

Now why should tax incentives be part of the bill?

The use of tax incentives to promote energy development is not some radical new idea. From the time of the enactment of the income tax in 1916, we have had tax incentives for the production of oil and gas.

In 1978, we went further. We created the first tax incentives for renewable fuels and for conservation.

These incentives were effective. Last July, at a Finance Committee hearing, economist Kevin Hassett told the committee that the tax credits ''were fairly successful at stimulating conservation activity.'' More specifically, he found that ''a 10 percentage point credit would likely increase the probability of investing [in conservation] by about 24 percent.''

The Finance Committee amendment takes this experience to heart. We use targeted tax incentives to promote investments that are critical to energy independence.

We do this in three important ways. First, we create incentives for new production, especially production from important renewable sources.

Second, we create incentives for the development of new technology.

Third, we create incentives for energy conservation.

Let me explain each in turn.

First, new production. Regardless of the source, total U.S. energy production directly affects our dependence on foreign sources of energy.

If U.S. production rises, while consumption remains constant or falls, we become less reliant on foreign energy. Unfortunately, the opposite is expected to occur.

Through 2020, energy consumption is projected to increase more rapidly than domestic production. If that happens, our reliance on foreign energy—shown on the chart as ''net imports'' of energy—will increase accordingly.

Here is how we address the problem.

We extend the wind and biomass credit for an additional 5 years. We also qualify many more sources as renewable fuel sources, including geothermal, solar, plant life, and other sources.

We create incentives for clean coal. If you retrofit to use currently available clean coal technology, you are eligible for a production tax credit. If you use advanced technology, you're eligible for both an investment credit and a production credit.

We create a new credit for oil and gas production from marginal wells, and a limited tax break for geological and geophysical expenditures.

Each of these tax incentives will encourage more energy production, from a variety of renewable and traditional sources.

Let me turn to the second key element of the bill. New technology.

Think big. Thing new. Think way into the future.

New technology can bring both energy independence and a cleaner environment.

Before long, our cars and trucks will run on electricity, new and alternative fuels, and fuel cells. And maybe someday, when we get home from work, we'll plug our fuel cell automobiles in to generate the electricity for our homes.

But we need to make investments in these technologies today. History tells us it can take a very long time to deploy new technology. The first commercial telephone service was offered in 1876, but it took more than 90 years to make the service available to 90 percent of residences in the United States.

It would be a shame if it takes half that time to bring these promising new technology vehicles to market.

So here is what we do.

We create tax credits for the purchase of new technology vehicles. These vehicles of the future. They'll be powered by alternative fuels, by fuel cells, and by electricity.

In the near term, we provide tax credits for the purchase of hybrid vehicles, which run partly on electricity and partly on gasoline.

What is so great about these vehicles?

For starters, fuel cell and electric vehicles are zero-emissions vehicles. In the meantime, hybrid and alternative fuel vehicles can speed us toward the development of these zero emissions vehicles.

On top of that, when it comes to emissions and fuel economy, these vehicles have significant advantages compared to traditional fuel vehicles.

To make sure of this, we provide tax credits only to vehicles that meet very stringent emissions standards.

There's a related point. New vehicles require new fuels. And it takes new infrastructure to deliver these fuels. Therefore, we provide tax incentives for the installation of new refueling station technology and for the purchase of alternative fuels.

All told, these investments in new technology will transform automotive transportation in the United States, so that it is cleaner, more fuel efficient, and less reliant on imported oil.

The third key element of the bill is conservation.

Conservation is the only way to solve the problem of excessive dependence on foreign imports. When we increase conservation, it has the same effect as if we reduce consumption. We see that this will lessen our reliance on foreign sources of energy.

Conservation also will have positive environmental effects. Namely, cleaner aid.

Perhaps most important, tax investments in energy conservation will reduce monthly energy bills.

How do we accomplish this?

We create incentives for people to get more complete energy consumption information with devices like the smart meter, which allows people to track energy use in their homes.

We create incentives for people to buy energy efficient refrigerators, air conditioners, and other appliances.

And we encourage energy efficient construction, to make homes and commercial buildings more energy efficient.

Those are the three key elements of the bill. New production, new technology, and conservation.

We also address several other issues. Perhaps the most important is electric utility restructuring. This is important for investor owned utilities, municipal utilities, and cooperatives. And, of course, for consumers.

But there is a lot of uncertainty. We all remember the rolling blackouts in California. Many other states also have been affected. In Montana, the legislature has had to delay the implementation of a law calling for retail choice, because the state does not yet have a competitive market in place.

There is similar uncertainty in other states and nationwide.

To my mind, we don't yet know what a restructured electric industry will look like.

In light of this, the amendment tells the Treasury Department to report back to us by the end of the year on restructuring and the tax issues it raises. The study will help us make the right decisions to address future issues raised by restructuring.

Senators BINGAMAN and MURKOWSKI may wish to go further, as part of this bill, and Senator GRASSLEY and I are discussing options with them now.

At the same time, there are some current problems, that we do know how to address.

The amendment does so with respect to nuclear decommissioning funds and the treatment of cooperatives.

Before closing, I'd like to acknowledge all of those who helped write the Finance Committee bill.

The President's budget called for tax incentives for renewable resources, residential solar systems, alternative fuel vehicles, and combined head and power systems.

Those are included.

Our committee members have also made very important contributions.

Our ranking member, Senator GRASSLEY, has worked hard to make this a balanced, bipartisan bill.

Senator HATCH and others were the principal authors of the alternative fuels provisions.

Senator ROCKEFELLER was the principal author of the clean coal provisions. Other Members were responsible for other important provisions.

I also appreciate the help of the leaders of the Energy Committee, Senators BINGAMAN and MURKOWSKI. We are lucky that they also are members of the Finance Committee, and we benefited from their expertise and dedication.

In other words, this has been a cooperative effort, all around.

Pulling this together, we have a package of tax incentives that are important in their own right and that will complement the broader energy bill.

In short, this amendment is good environmental policy and good energy policy.

Don't get me wrong. This bill is not a panacea. It is a work in progress. It is just a step. But it is a good step. A step in the right direction.

I thank members and urge adoption of the amendment.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to and the motion to reconsider is laid upon the table.

The amendment (No. 3286) was agreed to.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Madam President, may I ask the Senator from Montana, my understanding is that there is going to be a managers' amendment out of the Finance Committee on the energy tax aspect.

Mr. BAUCUS. The Senator is correct. Given the posture we are in, I assume procedurally that is available at this time. But that is an assumption. I am not positive. That is an assumption. If procedurally that is available, the Senator is correct.

Mr. MURKOWSKI. Well, I would like to have some assurance that we will have an opportunity for input in the managers' amendment before I would agree to a unanimous consent which I assume will be forthcoming. The Senator from Montana has not proposed a unanimous consent, he has just proposed this; is that correct?

Mr. BAUCUS. In answer to the Senator, the Finance Committee tax incentives are now part of the energy bill. The Senate has adopted them. They are in the bill now. I am not at this point attempting to seek a UC request.

Mr. MURKOWSKI. Well, it would be my hope we could work to——

Mr. BAUCUS. I understand. I have been working with the Senator and with the distinguished chairman of the committee to try to figure out what appropriately could be put in that package.

Mr. MURKOWSKI. It would appear, Madam President, it would be a combination of either specifically identified amendments that could be agreed upon or we would have to address the issue of germaneness. If I have the assurance of the chairman of the Finance Committee that he is willing to work with us on that aspect, I would be satisfied.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, might I inquire of the Senator from Montana, it is the Senator's intention that the Finance Committee version—not a modified version of that—be offered for inclusion in the underlying bill; is that correct?

Mr. BAUCUS. I say to my good friend, the Senate has already adopted the measure that passed the Finance Committee. That is now an adopted amendment and now part of the energy bill.

Mr. KYL. The reason I ask is, there was some confusion at the desk as to which version the Senator was offering.

Mr. BAUCUS. That is correct.

Mr. KYL. Since there was not an amendment pending at the desk.

Mr. BAUCUS. The two versions at the desk were identical.

Mr. KYL. I thank the Senator.

Mr. MURKOWSKI. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The majority leader.

Mr. DASCHLE. Madam President, I want to just announce that we will be offering a unanimous consent request shortly that would propose that we limit the number of amendments to be taken post cloture to a certain number. I believe we are going to suggest seven on a side. But let me say, with or without that unanimous consent request, post cloture, Senators would still be eligible to offer amendments having to do with certain tax provisions or any other provisions of the bill.

What we are simply trying to do is to find a way, at long last, to bring this bill to closure. I remind my colleagues that I laid this bill down on February 15. It is now April 23, and the only way we are going to bring this to conclusion so that we can move to other legislation is to either get this unanimous consent request that Senator LOTT and I are about to propound or cloture.

So I ask my colleagues for their cooperation in this regard. And failing the unanimous consent, as my colleagues may note, I have moved the cloture vote to 2:30 this afternoon. So one or the other will occur. Either we will get a UC or we will have a vote on cloture at 2:30 this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, I appreciate the work we have been able to do to try to get a reasonable agreement as to how to proceed on the death tax matter. I think the agreement just entered is fair to all sides.

Also, I think it is very important that we have the tax section as a part of our energy package, when it is completed, because many of the important incentives to get more production and to find alternative fuels and develop new technologies—whether it is hybrid cells or whatever it may be—are in that section. We have almost $15 billion that came out of the Finance Committee unanimously, as I recall. So that needed to be included. The fact that it is included is a very important recognition that work has been done by Senator GRASSLEY, Senator BAUCUS, and others.

With regard to the unanimous consent request we are going to propound to limit the number of amendments and get to passage by a time certain, I also think that is the right thing to do. There may be many amendments that are out there, but we could not get an agreed-to number. I know we can accept a limited number of five or seven, whatever that number may be. Also, we are prepared to make a commitment to get final passage on this legislation no later than Thursday at 6 o'clock. I think that is the responsible thing to do. I support that. And Senator DASCHLE and I have been working for the last 24 hours to try to come to that agreement.

It is time we bring consideration of this bill to a conclusion. We have had a full debate, lots of amendments. I am sure nobody is perfectly happy with it, but to have expended over 5 weeks and then not be able to bring this to conclusion, would be disastrous for our country, and the Senate would look very bad.

So I hope we come to an agreement on how to get a vote on this legislation, complete action, and send it to conference for final activity.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

Mr. DASCHLE. Madam President, yesterday was the 1:30 p.m. filing deadline. The Baucus-Grassley amendment was not part of the substitute then so people couldn't draft amendments to that section. To be fair, I ask unanimous consent that Members have until 1 p.m. tomorrow to file first-degree amendments to the Baucus-Grassley title and that Members have until 10 a.m. Thursday to file possible second-degree amendments to those amendments.

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

Mr. DASCHLE. I thank the Chair and yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Madam President, I have noted on a couple of occasions this morning that it was our intention, in close consultation with the distinguished Republican leader, to see if we might find a way to bring closure to the bill, either with or without cloture. But I ask unanimous consent that immediately following cloture, notwithstanding the cloture vote, and notwithstanding the provisions of rule XXII, the Senate resume consideration of the energy bill with the opportunity of each leader or his designee to offer seven amendments which are either energy or tax related.

The PRESIDING OFFICER. Is there objection?

The Republican leader.

Mr. LOTT. Reserving the right to object, and I will not object, I want to say again, this is the right way to proceed. We have been on this legislation for 5 weeks. We have had a full debate. Senators on both sides of the aisle have had opportunities to offer their amendments. This will give us seven more opportunities on each side. We will have to get a limit. We will have to have a process, which will not be easy for either one of us. But we have discussed this in our caucus. We are prepared to accept the limitation. This would also be the process that would get us to a conclusion by, I believe, Thursday or Friday, at the latest, of this week.

I support this initiative, and it is a bipartisan effort. I thank Senator DASCHLE for making the request. I withdraw my reservation.

The PRESIDING OFFICER. Is there objection?

The Senator from California.

Mrs. FEINSTEIN. Madam President, reserving the right to object, I would like to ask the majority leader if three amendments would be considered among his amendments. The first would be Senator SCHUMER's amendment to remove the ethanol mandate, the renewable fuels mandate from the bill; second would be Senator BOXER's amendment to remove the safe harbor provisions relating to liability; and the third would be my amendment to remove PADDs I and PADDs V from the renewable fuels requirement.

Mr. DASCHLE. Madam President, I certainly want to work with the distinguished Senator from California to accommodate her and other Senators who wish to be heard on the ethanol question. I know this is a very important matter for them. At this point, I would not be able to confirm that three of those seven amendments would be related to ethanol, although I would not want to assume that they would not be part of it.

I think we would want to negotiate with all of our colleagues to accommodate as many Senators with an interest in offering amendments as possible. Keep in mind, as I said earlier, this is in addition to, cloture notwithstanding. Those amendments that are eligible to be offered postcloture, we anticipate they would still be offered. It could be, and I would guess most likely would be, the case that one or more of those amendments would be able to be offered without the inclusion in this unanimous consent request.

Mrs. FEINSTEIN. In response to the majority leader, if I may, Madam President, we do not know at this time whether they would all be germane under the bill. Based on the fact that the majority leader is only reserving seven spaces and will not permit three spaces for this, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Alaska.

Mr. STEVENS. Madam President, I had a commitment to offer an amendment to the energy bill dealing with the right of the Eskimo people of Alaska to proceed with oil and gas development on their lands. This weekend I conferred with them and their representatives, and they would prefer not to raise that issue at this time and to allow the process to go forward in terms of the energy bill and in terms of their rights which they may wish to raise at another time but do not wish to have me raise at this time.

Under the circumstances, I want the manager of the bill to know we will not offer the amendment that would permit drilling on the lands in the Kaktovik area that are owned by the Kaktovik Eskimos, and the subsurface rights owned by the North Slope Borough. I believe the decision is a right one, and I am going to honor their request not to introduce the amendment at this time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. REID. Madam President, I ask unanimous consent that the Senate recess begin now rather than at 12:30 p.m.

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

Thereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. MILLER).

The PRESIDING OFFICER. The Senator from Nevada.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

MODIFICATION OF SUBMITTED AMENDMENT NO. 3274

Mr. REID. Mr. President, Senator LANDRIEU has timely filed an amendment, No. 3274, but there was a typographical error on page 2, I am told. This has been reviewed by the minority, and they have no problem with our doing this. I ask consent this be allowed.

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

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

AMENDMENT NO. 3257 TO AMENDMENT NO. 2917, AS MODIFIED

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that amendment No. 3257 be modified with the change that is at the desk, the amendment be agreed to, and the motion to reconsider be laid upon the table.

Mr. REID. Mr. President, this has been cleared by Senator BINGAMAN.

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

The amendment (No. 3257), as modified, is as follows:

At the appropriate place insert the following

SEC. . CREDIT FOR PRODUCTION OF ALASKA NATURAL GAS.

(a) IN GENERAL.—Subpart D of part IV of sub-chapter 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. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit of any taxpayer for any taxable year is the credit amount per 1,000,000 Btu of Alaska natural gas entering any intake or tie-in point which was derived from an area of the state of Alaska lying north of 64 degrees North latitude, which is attributable to the taxpayer and sold by or on behalf of the taxpayer to an unrelated person during such taxable year (within the meaning of section 45).

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount per 1,000,000 Btu of Alaska natural gal entering any intake or tie-in point which was derived from an area of the state of Alaska lying north of 64 degrees North latitude (determined in United States dollars), is the excess of—

''(A) $3.25, over

''(B) the average monthly price at the AECO C Hub in Alberta, Canada, for Alaska natural gas for the month in which occurs the date of such entering.

''(2) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after the first calendar year ending after the date described in subsection (g)(1), the dollar amount contained in paragraph (1)(A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting 'the calendar year ending before the date described in section 45M(g)(1)' for '1990').

''(c) ALASKA NATURAL GAS.—For purposes of this section, the term 'Alaska natural gas' means natural gas entering any intake or tie-in point which was derived from an area of the state of Alaska lying north of 64 degrees North latitude produced in compliance with the applicable State of Federal pollution prevention, control, and permit requirements from the area generally known as the North Slope of Alaska (including the continental shelf thereof within the meaning of section 638(1)), determined without regard to the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)).

''(d) RECAPTURE.—

''(1) IN GENERAL.—With respect to each 1,000,000 Btu of Alaska natural gas entering any intake or tie-in point which was derived from an area of the state of Alaska lying north of 64 degrees North latitude after the date which is 3 years after the date described in subsection (g)(1), if the average monthly price described in subsection (b)(1)(B) exceeds 150 percent of the amount described in subsection (b)(1)(A) for the month in which occurs the date of such entering, the taxpayer's tax under this chapter for the taxable year shall be increased by an amount equal to the lesser or—

''(A) such excess, or

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the Alaska natural gas credit received by the taxpayer for such years had been zero.

''(2) 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.

''(e) APPLICATION OF RULES.—For purposes of this section, rules similar to the rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.

''(f) 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.

''(g) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas entering any intake or tie-in point which was derived from an area of the state of Alaska lying north of 64 degrees North latitude for 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) except with respect to subsection (d), ending with the date which is 15 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), 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 Alaska natural gas credit determined under section 45M(a).''.

(c) ALLOWING CREDIT AGAINST ENTIRE REGULAR TAX AND MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (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 45M(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 ''producer credit''.

(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. 45M. Alaska natural gas.''.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Daschle/Bingaman substitute amendment No. 2917 for Calendar No. 65, S. 517, a bill to authorize funding for the Department of Energy and for other purposes:

Jeff Bingaman, Jean Carnahan, Edward Kennedy, Patty Murray, Mary Landrieu, Byron L. Dorgan, Robert Torricelli, Bill Nelson, John Breaux, Tom Carper, Tim Johnson, Hillary R. Clinton, Jon Corzine, John Rockefeller, Daniel Inouye, Max Baucus, Harry Reid, Maria Cantwell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on amendment No. 2917 to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The yeas and nays resulted—yeas 86, nays 13, as follows:

[Rollcall Vote No. 77 Leg.]

YEAS—86

Akaka	Domenici	Lott
Allard	Dorgan	Lugar
Allen	Durbin	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Gramm	Nickles
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Cochran	Jeffords	Specter
Collins	Johnson	Stevens
Conrad	Kennedy	Thomas
Corzine	Kerry	Thompson
Craig	Kohl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	

NAYS—13

Boxer	Clinton	Feinstein
Cantwell	Feingold	Graham

Kyl	Reed	Wyden
McCain	Schumer	
Murray	Stabenow	

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 86, the nays are 13. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 3030 TO AMENDMENT NO. 2917

Mr. SCHUMER. Mr. President, I ask unanimous consent that the amendment now pending be laid aside, and I call up amendment No. 3030 and ask for its immediate consideration.

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

Mr. SCHUMER. Mr. President, I further ask unanimous consent that following debate on the amendment, the Senate proceed to a rollcall vote on the amendment.

Mr. LOTT. I object.

Mr. SCHUMER. I withdraw that request.

The PRESIDING OFFICER. The request is withdrawn.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself and Mrs. FEINSTEIN, proposes an amendment numbered 3030 to amendment No. 2917.

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

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

The amendment is as follows:

(Purpose: To strike the section establishing a renewable fuel content requirement for motor vehicle fuel)

Beginning on page 186, strike line 9 and all that follows through page 205, line 8.

On page 236, strike lines 7 through 9 and insert the following:

is amended—

(1) by redesignating subsection (o) as subsection (p); and

(2) by inserting after subsection (n) the following:

''(o) ANALYSES OF MOTOR VEHICLE FUEL CHANGES''.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this is an amendment on which we have had some discussion. It is the amendment to strike the ethanol mandate, the ethanol gas tax, from the energy bill.

Once again, I want to let my colleagues know how much I understand those who are for this amendment, their desire to do it, and I particularly want to let people know how much I respect our majority leader, TOM DASCHLE, and how painful it is for me to oppose him on something about which I know he cares very much.

He is a principled, compassionate, and an extraordinary public servant. He is a friend to the people of my State and the whole country, and I thought long and hard about this but felt compelled to speak out about it.

The ethanol mandate in this bill is something we have not seen in many years. It is one of those provisions that sort of starts out quietly, sometimes passes this body and the other body, and becomes law. There are these types of provisions that come up every so often without much debate, and then a year or two later there is an outcry in the Nation. We all come back and say to one another: How the heck did this thing pass? How did it pass with so little debate? How did it pass with such detrimental requirements to such a large percentage of our population?

It happened on the catastrophic illness bill about 10 years ago. It happened on the S&L bill about 20 years ago when we allowed S&Ls to take people's hard-earned money and invest it in almost anything they wanted. Each of these amendments, as this one, has the potential to sort of breeze right through the legislative process, be signed into law because it seems all the special interests that want it are lined up behind it, and only after it becomes law is there a public outcry. I believe that will happen with this amendment, and I ask my colleagues to be very careful before they vote for it because what this mandate provision does, above all, by requiring that every State use ethanol or buy ethanol credits for their gasoline, whether they need it or not, is it will raise gasoline prices. It is like a gas tax in every State of the Union, a minimum of 4 cents to 10 cents, and probably at certain times much more than that.

If we look at the States, those on the east coast and the west coast are more affected—I have a chart with maps—and even States in the heartland will be affected as well.

Why are we doing this? We know we want to keep the air clean, but the refiners tell us ethanol is not the only way to proceed. Many environmental leaders say ethanol is at best a neutral proposition; it sometimes will reduce carbon in the air but will increase smog. At the same time, we are saying as to those additives that cause trouble and might pollute the ground, you cannot sue those who put them there.

This provision is a combination. It is almost a bewitching brew of cats and dogs that leads to trouble for the American people.

I have gone over in my previous talks what this amendment does and why it has come about, but let me say that every one of us wants to see the air clean, every one of us wants to see no backsliding in the clean air provisions, and every one of us believes there are a number of ways to do it. In some States in the Middle West, ethanol is probably the best way to do it, but in many States on the coasts, in the heartland, and in the Rocky Mountain areas, ethanol is more expensive, less environmentally useful, and a needless mandate.

Let me again read the names of some of the States where the price of gasoline will go up a lot. This is a study that is conservative and that does not deal with spikes. In Arizona, it will go up 7.6 cents; in California, 9.6 cents; in Connecticut, 9.7 cents; Delaware, 9.7; Illinois, 7.3; Kentucky, 5.4; Maryland, 9.1 cents; Massachusetts, 9.7 cents; Missouri, 5.6 cents; New Hampshire, 8.4 cents; New Jersey, 9.1 cents; New York, 7.1 cents; Pennsylvania, 5.5 cents; Rhode Island, 9.7 cents; Texas, 5.7 cents; Virginia, 7.2 cents; Wisconsin, 5.5 cents; and in all the other States it goes up 4 cents.

Some of our colleagues say this is necessary in the Middle West. They tried to pass a mandate in Nebraska and in Iowa. In both cases it was defeated. The legislative bodies of those States, which will do a lot better under ethanol mandates than New York, California, Texas or Florida, defeated it, and yet we have the temerity to impose it on every State in the Union.

Many of my colleagues on the other side advocate free market policies. I have rarely seen a greater deviation from free market policies than this proposal. As somebody said to me, first the Government subsidizes ethanol and then mandates that everybody use it. That sounds more like something out of the Soviet Union than out of the United States of America.

I, too, want to help corn farmers, and my voting record shows it, but this is going to be trickle down for the farmers. As we have mentioned before, Archer Daniels Midland controls 41 percent of the ethanol market. If the mandate is tripled, which is what we do, there will be price spikes and somebody with monopoly power—as has Archer Daniels Midland or Coke—will be able to raise the prices through the roof. Remember the California electricity crisis where someone had a virtual monopoly on a necessity? They raised the price. That is what is going to happen if we pass this ethanol mandate.

I am going to yield for a few minutes and let my colleague from California join in. But the bottom line is simple: There are better ways to clean the air for most parts of the country. This is expensive, it is a mandate, it will raise our gasoline prices, and it is so antithetical to free market policies, I find it hard to believe we are going to pass it.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. CARPER). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to support the amendment of Senator SCHUMER, which is to remove the so-called renewable fuels part of the energy bill.

I am a member of the Energy Committee. You can imagine my consternation when I find a bill that is put together in the dark of night with this renewable fuels requirement that has had no hearing, no comment, no opportunity for the Energy Committee to take a good look at it.

This is a bill that adds to a subsidy of 53 cents a gallon on ethanol under existing law, it mandates a tripling of the

ethanol use in the next 10 years throughout the Nation, this is in addition to protective tariffs of 54 cents a gallon in existing law, so no nation that might be able to produce it more cheaply has no chance of exporting it economically into the United States. It is protect, protect, protect.

It has been said that this is a massive transfer of wealth out of some States into other States. I deeply believe all of that is true.

Only 1.77 billion gallons of ethanol were produced in 2001. The Senate bill requires 5 billion gallons by 2012. Alone, California, the largest State in the Union, is forced to use 2.68 billion gallons of ethanol it does not need. It doesn't need this ethanol to clean the air because California has reformulated fuel and can meet the clean air standards at all times except for winter months in the southern California-Los Angeles market. Then it uses ethanol.

This chart very clearly indicates the situation. I have shown this before. Here, the blue is what my State would use of ethanol to meet clean air standards. This is what this mandate requires that the State either use or pay for. That is not good public policy. It is not good public policy because the State doesn't need it.

Additionally, the California Energy Commission has said this action will create a 5-percent to 10-percent shortfall in California's gasoline—a 5-percent to 10-percent shortfall.

Our refiners are at 98 percent of capacity, so how do we refine enough gasoline to meet the need? We do not. This means a gas tax.

It is estimated by some that it could even lead to gas prices of $4 per gallon. Senator SCHUMER has said it is 10 cents a gallon additional for California, New York and other States. If you put two tankfuls in your car a week, figure out what that costs in terms of an additional tax that every motorist will be paying.

Since 98 percent of the ethanol production is based in the Midwest, States outside the Corn Belt have severe infrastructure and ethanol supply problems. This is the reason we do: You cannot put ethanol in a pipeline. You have to barge it, truck it, or rail it in. We will have to rail in 2.68 billion gallons of ethanol that California does not need. The infrastructure is not presently there for it.

We have talked about the high market concentration, the fact that one company controls 41 percent of the ethanol production and that eight companies together control 71 percent. Some articles have been written said this is what creates a massive transfer of wealth: 70 percent of the dividends in this package go to the ethanol producers; only 30 percent go to the actual corn farmers.

Ethanol also has a mixed environmental impact. Let me tell you why. Ethanol helps retard carbon monoxide, but ethanol also produces more nitrogen oxide emissions. So the NO_X, which produces smog pollution, is actually greater as a product of ethanol.

In a State like California that has been very concerned about pollution, this is only going to do one thing: it is going to increase smog in the State of California.

Additionally, ethanol enables the separation of the components of gasoline; therefore, benzene, for example, which is in gasoline and which is carcinogenic, can separate from gasoline. So if there is a leak, then benzene is one of the additives that leaks. All of the reports say it enables gasoline leaks to travel farther and faster, once it is released.

Important in all of this to those of us who care about transit and highway funding is something that is really interesting. We presently put into the Highway Trust Fund about 18 cents a gallon. Since ethanol is only taxed at 13 cents a gallon the Highway Trust Fund will lose at least $7 billion. So this lessens the highway trust fund for everybody who looks to that fund for dollars for buses, for dollars for highways, for dollars for transportation systems. There will be at least $7 billion less according to CRS.

Let me read what the boilermakers say about that. The International Union of Boilermakers have written:

> Simply put, for each $1 billion the Trust Fund loses, America loses almost 42,000 jobs. . . . And that is a resource we cannot renew. It is our understanding that by mandating the use of ethanol, this legislation is encouraging the market penetration of ethanol, undermining America's infrastructure and America's environment.

The bottom line in this letter is that this ethanol mandate is a dangerous approach and is going to result in dramatic job loss.

Also, ethanol is not necessarily a renewable fuel, despite what everyone says. There are a number of scientific reports that have found it takes more energy to make ethanol than it saves. It actually takes 70 percent more energy to produce ethanol than it saves.

So the bottom line is that this is a bad deal. This deal is even made worse by the fact that despite these environmental considerations, nobody will be able to sue. There is a safe harbor provision, so no one can sue if the environment is damaged or the public health is damaged.

Here we have a bill that on top of the ethanol subsidies, it cuts the highway trust fund, it mandates an increase in the gas tax, and it benefits mainly producers in the Midwest. It is, in my view, a bad addition to this energy bill. Frankly, I think it is so bad that I am very pleased to support Senator SCHUMER's amendment which would remove this renewable fuels requirement from the bill, permit an oxygenate waiver but remove the ethanol from the bill.

I don't quite know how we defeat this. I wish to read from a Wall Street Journal editorial that ran last week:

> If consumers think the federal gas tax is ugly, this new ethanol tax will give them shudders. Moving ethanol to places outside the Midwest involves big shipping fees, or building new capacity. Refiners also face costs in adding ethanol to their products. According to independent consultant Hart Downstream Energy Services, the mandate would cost consumers an extra annual $8.4 billion at the pump the first 5 years. New York and California would see gas prices rise by 7 cents to 10 cents a gallon. . . .
>
> And that doesn't take into account inevitable price spikes. There simply isn't enough corn in all of Iowa to meet new ethanol demands. Last year the ethanol industry produced only 1.7 billion gallons. The Daschle mandate would require it to increase production by more than 35 percent in a mere 3 years.
>
> That is a tall order for any industry, much less one that relies on Mother Nature. Some estimates are that a shortage could double gas prices.

Why are we doing this? Why does this bill have to be so greedy? Why does it need to triple ethanol use? Nobody really knows what it does to the environment. Why triple it? How is a good energy bill going to be viewed, if it triples something about which there is great uncertainty and many States don't need to use it? The west coast and the east coast don't have the infrastructure to absorb it, let alone a $7 billion cut in the highway trust fund.

Cut the highway trust fund and Californians are forced to pay higher gas taxes, and have less money to build the roads, highways, and transportation systems they need, let alone cut 300,000 jobs nationwide.

I will admit that the ethanol lobby is a tough lobby. About a year ago, I was trying to negotiate in my office. I invited most of the California refiners, oil companies, the corn growers, and the renewable fuels associations. I thought we had worked out something. Then, the renewable fuels people backed off the table. Now they come back greedy.

What they have done—and let us call a spade a spade—is essentially quieted the refineries by promising them in this bill protection against liability, so that nobody can sue an oil company if the ethanol causes gasoline to separate, as it does, and benzene leaks, and people are adversely impacted. They cannot sue. The gasoline companies—because they told me this—wanted this protection against liability. If they had the protection against liability, they would reluctantly go along with this package.

That is not good energy policy. How is it good energy policy to triple something that has mixed environmental impact, at best? How is it good energy policy to increase gas prices? How is it good energy policy to take $7 billion out of the highway trust fund, cost 300,000 jobs, and cut funding to the transportation system, the highways, and the roads that this country needs? How is that good energy policy?

To mandate a tripling of the fuel, then saying they are credits, but if you do not use them, you pay for them. This is on top of fundamentally protecting the Midwest corn industry by

putting a 54-cent-a-gallon tariff on any imported ethanol to keep it out of the country because it might cost the motorists less, how is that good energy policy?

Somebody come and tell me.

California would top the list in the amount of transit dollars lost because of the ethanol mandate. Maybe nobody cares about California, but Senator BOXER and I do.

I would like to reference an article that mentions the big losers.

California is a big loser. It loses $905 million from the highway trust fund over 9 years.

Texas is a big loser. It loses $750 million from the highway trust fund.

New York is a big loser. It loses $493 million that could be used for subways, for buses, and for transit systems.

Pennsylvania is a big loser. It loses $446 million.

Florida is a big loser. It loses $436 million from the highway trust fund.

Illinois: $337 million from the highway trust fund.

Ohio: $336 million from the highway trust fund.

Georgia: $333 million from the highway trust fund.

Michigan: $312 million from the Highway Trust Fund.

And New Jersey, the last State that is a big loser, loses $262 million from the highway trust fund.

Mr. SCHUMER. Mr. President, if the Senator will yield for a question, the Senator is saying that in those States we are going to charge the motorists more, but at the same time, because all roads lead to ethanol, we are going to give them less money for their highway trust fund. So they pay more for gasoline, but, unlike even the gasoline tax that doesn't go to road building, the effect of this amendment is to take money out of road building.

Mr. FEINSTEIN. That is exactly correct, because of the subsidy on ethanol, usually 18 cents a gallon, which goes into the highway trust fund. With ethanol, it drops to 13 cents a gallon. That is a $7 billion take from the highway trust fund over the years of this bill.

Mr. SCHUMER. I thank the Senator from California.

Mrs. FEINSTEIN. I thank the Senator from New York.

How is this a good provision for the energy bill? How does it even justify the rest of the energy bill? I don't think it does.

How can you cost States this enormous amount? How can you force a tripling of ethanol when you don't know all of the environmental effects? How can you force it when you know the effect is increasing NOx which increases smog? How is that good legislation?

It may well be that some ethanol is good. The problem is tripling it. It is forcing ethanol where it isn't needed. It is forcing ethanol with a potential deterrent to health, to the environment, and to the highway trust fund.

I have a dramatic difference of opinion with respect to this bill. I believe that any shortfall in supply, because of manipulation, which we know is possible because just a small number of producers control the market—this is Enron redux; therefore, they will have unusual market control over price—will be exacerbated because the State will be reliant on ethanol coming from another region.

According to a recent report issued by the GAO, 98 percent of ethanol production is located just in the Midwest. I don't have a problem if the Midwest wants to use it; that is fine with me. The problem is as a matter of public policy pushing it here and pushing it there where States don't need it.

As you can see, if you can't pipe it, you have to truck it or barge it or rail it. Where is the infrastructure? How do you get these billions of additional gallons required to California? What if some of the plants aren't built?

With the electricity crisis in California, it is very interesting; there were a number of new electricity generating facilities that were going to come online. The economy dipped. Some of them aren't built. Companies have financial reverses, and they don't build.

What is to say that is not going to happen with ethanol? Who is to say that all of the facilities the ethanol supporters believe will be there will actually be there?

Who is to say there will not be price spikes? Who is going to say there is not going to be an increase in the gas tax? Who is to say we are not going to lose $7 billion from the highway trust fund and that that is not going to result in 300,000 less jobs in this country? How is that good public policy?

I think it is unconscionable public policy. It is selfish public policy. It is parochial public policy to the nth degree.

I must tell you, to me, this ethanol mandate overcomes everything else in the bill because I do not know any driver—California has some of the longest commutes in the Nation. Drivers sometimes fill their tanks three times a week. Some of our drivers travel 2½ hours in the morning and 2½ hours in the evening from the Central Valley to the coast to work.

What does that do to the price of gas? It is a huge tax increase. It would be hundreds of dollars a year at 10 cents a gallon. So nobody should think that you are not voting for a tax hike when you vote for this bill.

I think that I have covered it except I want, just once again, to repeat these losses for States. We have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 States that are big losers as to the highway trust fund: California, Texas, New York, Pennsylvania, Florida, Illinois, Ohio, Georgia, Michigan, and New Jersey. As the distinguished Senator from New York has said, they are going to be forced to pay higher gas prices, to lose money for the trust fund, to put something in their gasoline that they do not need that increases pollution and may well have a detrimental environmental effect.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, ordinarily I am in agreement with my esteemed colleague from California and certainly with my esteemed friend and colleague from New York, but this is one occasion where I could not be in more opposition to what was said and to the positions which are being held.

Earlier this morning, I vented my frustration over the continuing attacks against ethanol and other biofuels that extend back almost a quarter of a century. In many instances, opponents simply have said that the marketplace will not permit the price to go to the bottom cost. Opponents have said this will actually create a challenge and increase gasoline prices at the pump. But the information being provided just simply isn't accurate.

The RFS and the biorefinery concept will actually lead to the construction of many of the biorefineries now being planned in locations indicated by the red dots on this map I have. It is not simply concentrated within the Midwestern States, as has been suggested. This may be where it began, but, as in so many things, where things end does not always depend on where they began. This is a perfect example. I think Delaware is close to being included in part of that because biomass of all kinds, as well as animal waste, can be utilized in the development of ethanol and other fuels.

I would like to move away from some of the negative things that have been said about ethanol to something which I think is more positive and provides some information. The RFS will not increase the cost of ethanol from 4 to 50 cents more than ethanol-free gasoline. Depending on which statistic is being provided, you simply have to ask this question: Which cost analysis do you believe?

A consulting firm, working for the Oxygenated Fuels Association, whose members produce and market MTBE, 70 percent of which is imported—and the defeat of the RFS will keep MTBE markets alive—says it will increase the cost $4 to $9.75 per gallon. Do you believe those figures or do you believe the Department of Energy's Energy Information Administration material which says the increase, at the most, is between a half a cent and 1 cent per gallon.

If you do not believe our Department of Energy's Energy Information Administration calculation and cost estimate, then let's just go to marketplace reality, because that is where we will end up in any event.

Twenty years' experience in Nebraska, 1 cent less than ethanol-free gasoline at the pump; 10 years' experience in Minnesota, 8 cents less than gasoline at the wholesale level; 1.5 years' experience in California, there is no essential difference to the public; 10 years' experience nationwide, no essential difference to the public.

The question is, which numbers do you believe? It is always about that when you come to projections.

Furthermore, the availability of ethanol blends has been shown to actually drive down the price of all gasoline as a result of market forces. If you take a look at the wholesale price of regular gasoline versus ethanol, as shown on the chart, you can see that ethanol, as indicated by the green line on this chart—and on one or so occasions spiked above regular gasoline, such as back in 1992—continues to trail regular gasoline at the wholesale price, as you see the amount of experience that we have had over this 12- or 10-year period.

If you go to the next chart and take a look at the retail price of motor gasoline versus ethanol, you can see that that is a similar trend factor, so that ethanol has trended a lower cost than ethanol-free gasoline or, if you will, regular gasoline.

So the question is, in many instances, which numbers do you believe? If you do not believe the Department of Energy's Energy Information Administration, and you want to believe another organization, that is fine, but what I think you should do, ultimately, is look at the marketplace reality of what has, in fact, happened to the price of ethanol.

Further, as evidenced by these graphs, the cost of ethanol has been at or below the cost of gasoline. That cost advantage for ethanol has become more pronounced in recent months and is now nearly 30 cents a gallon lower than gasoline at the wholesale level.

This is the principal reason we cannot delay implementation of the RFS. The smaller, newer ethanol producers urgently need fair market prices.

Furthermore, ethanol production capacity by the end of 2002 is expected to be 2.3 billion gallons, the level required by the RFS in 2004. There will not be any shortages.

For those who have suggested that somehow we will not be able to produce enough ethanol to meet the standards and requirements, the facts, once again—the marketplace reality and the production reality—just do not show that.

The bottom line is that history and realistic projections show that ethanol will be the least cost option for refiners to extend supplies and meet octane needs.

Now, it also takes much less fossil-fuel energy to produce ethanol than it contains in a renewable form; and, consequently, there are major energy security benefits from its production and use. Biodiesel and cellulosic ethanol are even much better.

If you take a look at the net energy balance of corn ethanol, it increased from 1.24 percent in 1995 to 1.34 percent in the year 2000. Since then—you can follow the chart—higher corn yields per acre and new technologies used to convert corn to ethanol have further improved the net energy savings or the net energy balance.

So if you really take a look at the production of ethanol, it now consumes much less nonrenewable oil as the ethanol replaces. The latest U.S. Department of Agriculture report demonstrates that ethanol production actually has this positive balance that we have displayed on this chart. The bulk of the energy used in fertilizing the crops and to power ethanol production plants comes from natural gas or coal. Additionally, with farmers using more ethanol and biodiesel in their vehicles, the use of fossil fuels to produce biofuels could actually approach zero. The bottom line: Ethanol and other biofuels are America's best bet in cutting imports and advancing national and energy security. Everybody seems to be in agreement, we need to have less reliance on foreign oil.

Homeland security also benefits because biorefineries will be much smaller than oil refineries and far more distributed, as the first chart demonstrated. We don't have the same concern about concentration when we talk about biorefineries and spreading the biorefinery concept across our Nation, with positive effects for energy security as well as for homeland security.

Additives to gasoline such as aromatics and alkylates to replace MTBE and ethanol are not better and less expensive. Some have suggested that what we ought to do is find another way to go. We ought to find other additives, and they actually are best. When lead was phased out of gasoline in the early 1980s, the ethanol industry was hopeful that refiners would turn to ethanol to gain needed octane. Instead, they turned to aromatics, driving levels up to the point that they threatened engine performance and human health.

The Clean Air Act amendments of 1990 actually put a cap on aromatics and an especially low cap on benzene, a potent carcinogen. A recent sampling in Nebraska revealed that in several instances aromatics in gasoline exceeded the cap and passed well into the danger area, threatening the environment and human health.

What is not commonly known is that the other two aromatics, toluene and xylene, to some extent convert to benzene in the combustion process; therefore, both in the engine and in the catalytic converter. Furthermore, last week's prices demonstrate that on average the three aromatics I am referring to were selling about 52 cents a gallon higher than ethanol and again on average have an octane number about 10 points lower than ethanol.

Bottom line: The aromatics are no match for ethanol in terms of cost, octane, human health, and the environment.

Please recognize that the wholesale prices for aromatics on average last week were twice the cost of ethanol and are 10 points short in providing sought-after octane.

Alkylates are a better bet. They have an octane number ranging from 92 to 95. Ethanol has an octane number of 113. They have a valuable blending pressure while ethanol's blending vapor pressure requires compensatory action. However, alkylates are the most valuable component in finished gasoline, at least the value of premium gasoline. Because they are so valuable and so clean burning, they are husbanded by refiners and are in short supply and not available on the open market.

The other alternative being offered, alkylates—bottom line—they are valuable and clean burning, but their octane number is lower than ethanol, and they are destined to be much more costly than ethanol, as is the case with aromatics.

There is another point. There will be no shortages. There has been the suggestion that somehow we might find ourselves short on the production of ethanol. There won't be any shortages of ethanol and other biofuels in the marketplace over the next 10 years. If you take a look at poster No. 1, you have already seen the map showing ethanol plants, biofuel plants that are, first, those that are under construction or expansion, those that are undergoing planning, and those that are actually operating. By the end of this year, there will be surplus supplies to meet the 2004 target, and the incentives of the RFS will keep supplies well ahead of the requirements in the standards. If that proves to be wrong, there are provisions in the RFS to protect consumers—in other words, a backup plan if all else fails. With the exception of the Strategic Petroleum Reserve, there are no such provisions to protect consumers from rising foreign oil costs.

Bottom line: The provisions of the RFS and biofuels provide the driving public with much greater protection against shortages, higher prices, and negative national security, as well as environmental consequences than MTBE, aromatics, and alkylates.

In yet a better world, biofuels and all three of these gasoline components should work cooperatively to provide an optimum fuel—optimum in considering the full spread of the Nation's needs.

If you review the map and you review historic and current pricing structures, you see they not only provide assurance that there will be no biofuels shortages under the RFS that could drive prices up, but they also give evidence that it will not be the three big ethanol producers benefiting from the new public policies. Rather, the beneficiaries will be smaller producers of feedstocks and owners of biorefineries spread all across the country.

Bottom line: We must in fact build a better and a new and more self-reliant energy policy in America.

Another point: Ethanol biodiesel and other biofuels, their incentives and the RFS will actually save the taxpayer money. Study after study has shown over the years—this is the most recent study—that biofuels policies, programs, and incentives are real bargains

to Americans and of great import to the strength of our Nation. Americans are the big winners with ethanol and other biofuels and even bigger winners when these renewable fuels have ready access to the transportation fuels market at fair prices.

Some opponents of ethanol are simply wrong on their opposition. They have pointed out that the Iowa and Nebraska Legislatures were certainly trying to do something different than what we are proposing in this body. These were only exploratory regulatory efforts to increase the market for ethanol in both States and were in fact resolved in a positive manner that increased production and market share in Iowa and Nebraska. There was no effort to create a mandate but, rather, a standard for gasoline that would best serve the overall needs of the States.

The effort, though not embodied in law, was in fact successful. Between our two States of Iowa and Nebraska, we have the capacity to produce 920 million gallons of ethanol annually—more than enough in an emergency to meet 20 percent of our gasoline requirements with enough left over to give New York and California an additional helping hand.

By working together, we can find ways to make almost every State in the Union equally self-reliant when it comes to the additive to motor fuels gasoline. Just as the Senate passed the renewable portfolio standard for electricity that enjoyed the support of California and New York, structured to serve the overall electricity needs of the Nation, this standard is designed to help meet the overall transportation fuel needs of America.

In terms of national energy security, we are not importing electricity from distant nations unfriendly to the United States. Ours is a liquid fuel program. Failure to support the renewable fuel standard in reality will mandate our Nation to continue our dangerous and declining path to foreign oil dependency which everyone opposes.

In conclusion, it is clearly in the best interest of the United States for us to be able to pass this RFS. We in the Senate should band together to try to find ways that will help make the renewable fuel standard available for economic development and for the fuel security of all of our States. We need to advance a Manhattan-type project to ensure that we retake the world leadership in promoting biorefineries in order to increase energy, national and homeland security, create new basic industries and quality new jobs, while enhancing our environment.

The PRESIDING OFFICER (Mr. REED). The majority leader.

Mr. DASCHLE. Mr. President, I compliment the distinguished Senator from Nebraska for an outstanding statement and for the leadership he has shown on this issue for some time. He has been a stalwart advocate and an extraordinarily clear and strong voice on this issue. I congratulate him and thank him for all of his effort.

As the Senator from Nebraska has noted, there have been a number of myths perpetrated about methanol and ethanol that need to be addressed as we consider this RFS.

I want to take a couple of minutes—I know a number of my colleagues are on the floor and I know each one wants to speak—to address briefly these myths because they need to be knocked down.

A myth stated often enough becomes fact in the minds of many. We do not want these myths to become fact in the minds of our Senate colleagues before they have the opportunity to vote on amendments as critical as this one.

One myth is that this requires States to use ethanol. This does not require any State to use ethanol, not one drop, and I hope Senators will be clear about that point. Senators have heard that so frequently I am sure it is soon going to become fact in the minds of some, but because of the credit trading provisions, because of the waiver provisions in this legislation, there is no requirement that States use ethanol. So to begin with let's clarify that myth.

The second myth, and the one I have heard so often expressed on the Senate floor, is that this RFS is going to somehow increase the price of fuel. That assertion is made on the basis of one study done by Hart/IRI Research. That is the one cited by all of the opponents of RFS.

What they do not tell you is that the Hart/IRI Research organization is funded in large measure by the methyl tertiary butyl ether industry, by the MTBE industry. One-half of the revenue that is used to support Hart/IRI comes from Liondel Petrochemical, which is the largest marketer of MTBE, methyl tertiary butyl ether, and the advocate.

This is not, let me emphasize, an independent review. This is a very subjective review funded by the methanol industry to destroy the alternative energy fuels market. Their study, of course, advocates a position that is just not accurate and has no basis in fact. Their study projects that the price would increase 4 to 10 cents a gallon, and it is being used by our distinguished Senators from New York and California. The fact is, it is just wrong.

The Department of Energy said that the RFS requirement would mean less than 1 cent a gallon, nationwide one-half cent per gallon. That is a Department of Energy study.

The API study, the American Petroleum Institute study, said it would be a one-third of a cent increase—not 4 cents, not 10 cents. One would think the oil companies would be opposed to this. They support it. Why do they support it? Because they understand this has very significant opportunities for us to address the oxygenate market, the alternative energy market, the opportunities to deal with the challenges they are facing without MTBE. Their report, their review, their study says it would be a one-third of a cent increase, not 4 cents, not 10 cents, but one-third of a cent.

We have the Department of Energy and the American Petroleum Institute saying this will be less than a 1 cent increase in the overall cost of fuel.

Let us make sure that people understand. It is a myth, I say to my colleagues, it is a myth and do not let anybody tell you differently. There is no increase, no 4-cent, no 5-cent, no 10-cent increase. Who should know better than the Department of Energy and the American Petroleum Institute?

It is clear, Hart/IRI would lose most of its business if they could not sustain the position they have advocated from the very beginning in this very subjected, distorted, and erroneous assertion that we are going to see the kind of increase in cost that they have advocated and that is often repeated in the Senate Chamber.

There is another myth, and the myth is that somehow if we incorporate the renewable fuel standard, it is going to be disruptive to the petroleum market.

I will tell you what is going to be disruptive, Mr. President. What is going to be disruptive is if we phase out MTBE—14 States have already done that—if we phase out MTBE and we do not have anything in its place. You want to see disruption, wait until we phase out MTBE and there is nothing there. We have no alternative.

If you want to talk about the abrupt disruption of supply and the increase in cost, I cannot think of anything that will do that more effectively and in a more pronounced way than to simply do what we are scheduled to do right now: Phase out methyl tertiary butyl ether.

The very best thing we can do for the consumers is to pass this bill, to pass this standard to allow this gradual transition that this bill contemplates in phasing in an alternative to this disruptive approach that will currently be contemplated if we do not have something to substitute in its place.

That is the third myth, that we are subject to disruption if the bill passes. I would argue just the opposite. We are subject to major disruptions in supply and extraordinary increases in cost if this bill is not in place to address those disruptions now.

There are two more myths, and I want to talk about those. One is that it is ethanol that will affect this cost, and to find some alternative to ethanol is one that will provide the panacea. I have heard some of my colleagues come to the Chamber and say: We do not really need ethanol. The oil companies can come up with alternatives to ethanol, and we ought to give them the opportunity to come up with those alternatives without mandating that ethanol be used.

First, a large percentage of what the oil companies are going to have to use is either going to be imported or domestic. We know that. There is no other choice. The two alternatives to ethanol, in large measure, are imported

product. We have alkylates and we have iso-octane. Both of those are imported. Both of those are far more expensive than ethanol. Both of those would cause the price hikes that our opponents continue to argue are the reason they oppose ethanol.

The only domestic alternative is ethanol. The only domestic alternative where we can guarantee a supply is ethanol. The only domestic alternative where we know we are going to have some control on price is ethanol, if you look at DOE and API reports. So do not let anybody think that somehow we can import all these products and not be subject to dramatic increases in price. What is it about energy policy that would ever cause somebody to advocate more imported product is the answer? That is what some of our opponents are doing. I do not understand that.

If they are concerned about price, if they are concerned about supply, if they are concerned about disruption, if they are concerned about all the ramifications of making sure their consumers are protected, the last thing they should do is depend more on imported product that we know is going to cost more than ethanol.

The final myth is we do not have consumer protections in the bill. I am amazed some people make that assertion. They could not possibly have read the bill. There are a number of consumer protections beyond those I have already addressed.

The first consumer protection is that DOE is required under this legislation to look at the ethanol market and the supply problems that exist. They have the opportunity written in the legislation—it is in writing; it is guaranteed—that the ethanol mandate will be reduced.

The second guarantee is in subsequent years any State can apply and have the mandate reduced within a 90-day period, which is the day we have agreed to. We had a vote last week, and we acknowledged that the 240 days is long. We are prepared to go to 90 days. DOE and the EPA argue they would like to have more time, but we are going to insist they do it within 90 days so States can see their mandate reduced if they can demonstrate there is going to be some concern for disruption.

Then we have what I said at the beginning, the credit trading provisions. Any refinery that uses more ethanol can trade the credits generated from the use of additional ethanol to those refineries that do not use ethanol or that come in at a lower level than what the mandate requires.

We have credit trading, the waiver, and the overall review that is stipulated in the bill requiring EPA to reduce the mandate if disruptions can be proved.

We offered, I might also say, another year prior to the implementation of the legislation, in exchange for banning MTBE on schedule, and at least to date our opponents have rejected that offer. That would have been a fourth consumer protection I thought would have sufficed in meeting some of their concerns, but they chose not to take that offer. It stands as we proposed it, and clearly Senators would have an opportunity to avail themselves of that offer if they chose to do it.

There have been a number of myths, and I am disappointed the myths continue to be perpetrated without an adequate response. We are going to continue to respond to those myths and try to knock them down and clarify the record so all Senators are very clear about what these alternatives are prior to the time they have a chance to vote.

Mr. SCHUMER. Will the majority leader yield?

Mr. DASCHLE. I am happy to yield to the Senator.

Mr. SCHUMER. I would like to ask my colleague a question.

Mr. REID. Will the Senator yield for a unanimous consent request? Under the rule, I have 1 hour of time postcloture. While the majority leader is in the Chamber, I ask unanimous consent that 55 minutes of my hour be given to the Senator from New York, Mr. SCHUMER.

The PRESIDING OFFICER. The Senator from Nevada may yield that time to the majority leader or the manager but not directly to another Senator, absent unanimous consent.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that 55 minutes from the time of the Senator from Nevada be yielded to the Senator from New York.

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

Mr. SCHUMER. Mr. President, I had asked my colleague from South Dakota to yield for a question. Before I ask him a question, I reiterate what I said at the beginning of my speech, how much I respect him, his leadership, his integrity, and his fighting for all of us. It is such a difficult job to be majority leader, and no one in all the years I have been a legislator has done it better than the Senator from South Dakota. So it pains me to stand up and oppose him and ask him questions.

The only question I have is the following, and that is, let us—I do not know what the truth is. I hear from my refiners that they could do this a lot more cheaply. I hear from my refiners that bringing ethanol over, whether it be from overseas or from the heartland of America, will raise the price dramatically. So I guess the only question I ask my colleague is: If it is going to be cheaper with ethanol than any other method, either the alkylates or the reformulation of gasoline or anything else, why not let the market determine it? Because what if we are wrong in this bill and the price does begin to go through the roof, through a price spike, where my constituents would not be happy to wait 90 days, 3 months, as the price goes up so much, or not through a price spike but just because there is a shortage of ethanol and the market goes up?

I think ethanol is going to do very well once the oxygenate requirement and MTBE is eliminated anyway. The ethanol market is going to get better. It has to. So I guess my question to my friend—and I really mean this, ''my friend,'' not just in the legislative parlance—is, Why can't we let the market determine it? Why mandate it instead? Because the thrust of his argument is that ethanol is better—and maybe it is—and if it is, our argument does not mean much but then the market would have New York, California, and all these other States buy ethanol.

Mr. DASCHLE. Mr. President, the Senator from New York asks a very good question. My answer would be the same as I am sure he responded to Senator LEVIN about CAFE. Senator LEVIN said: Why not let the market work on CAFE? A lot of other Senators said: Why not let the market work on CAFE? I think the Senator disagreed, for good reason, because if we set goals oftentimes, as a country working within government and within the industry, we achieve them. Oftentimes, without the role of some goal-setting, we never achieve anything beyond where we are today. We did with CAFE in the past. I think we can do that with ethanol now. This is a goal, just as the Senator supported CAFE as a goal. We failed on that. I hope in this case we can achieve it.

The Senator understandably is concerned about price hikes. As I said a moment ago, if we are concerned about price hikes, I think we ought to be concerned about what happens when we phase out MTBE in a vacuum, because that is where we are going to get price hikes. We are going to get serious price hikes when we start relying on these imported products for which we are not certain of supply and we are certainly not certain of price.

As we phase in the RFS, we have an opportunity to do three things: First, require that DOE look at the supply and say, OK, if we need more time we are going to give it to you. We look at the States and we say, all right, if you want more time, you get an opportunity to ask us for a waiver and we will give it to you. And over all of that, we say beyond any other waiver or beyond a DOE review, we are going to say you can trade credits right now. You do not have to worry about any other decision. You can trade credits right off the bat.

So we have three protections built into the price hike. With this, we have no protections built in if we do nothing.

Mrs. FEINSTEIN. Will the majority leader yield for a question?

Mr. DASCHLE. I am happy to yield, but I know other Senators are waiting patiently. I came out of turn, but I would be happy to answer one question.

Mrs. FEINSTEIN. Since the majority leader attacked the points I made, I

would like to have an opportunity to respond.

Mr. DASCHLE. The Senator will have the opportunity, but I think it would be preferable to do it on her own time, but I will answer one question.

Mrs. FEINSTEIN. My question is, Is the Senator saying, then, that the credits in this bill do not say if you do not use it you have to pay for it?

Mr. DASCHLE. The credits in this bill allow you to get out from under the mandate without any intervention from DOE or EPA or anybody else. You are not required, in this legislation, with the RFS, to use one drop of ethanol.

Mrs. FEINSTEIN. But then do you pay for it if you do not use it under the credit trading provision?

Mr. DASCHLE. Of course you pay for it, but the credits are available.

Mrs. FEINSTEIN. So you pay the amount?

Mr. DASCHLE. Let us put this in the proper context. You pay an amount, but what are you going to pay when there is no alternative to MTBE? How much is that going to cost? If we phase out MTBE in California, and they are then forced to go to alkylates or iso-octane and you do not know what it is going to cost, you do not know whether a supply is going to be available and the people of California are forced to pay 30 or 40 cents more per gallon because that is the only available supply, I say the people of California would rise up in huge opposition. That is, of course, the choice of each of us has to make.

What we are saying is we have a very careful and balanced approach in phasing out MTBE with ethanol in a way that gives every State an opportunity to fashion and to tailor its response to the circumstances they find themselves in, with credit trading, with the waiver opportunity, and with the DOE review, not to mention a delay of 1 year in the implementation should Senators wish to afford themselves of the opportunity we present.

So there are tremendous protections for each one of these States should the Senators or should the States choose to use them.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I appreciate an opportunity to respond. The majority leader might want to listen or he might not want to listen. What he said might be true if one needed to use an oxygenate, but California does not need to use an oxygenate because it has a reformulated gasoline, and it has to use just a limited oxygenate.

This bill forces California to use this much that it does not need, and a careful reading of the credit trading provision in this bill means you either use this ethanol or you have to pay for it.

Let me respond to another point he made on the issue of increased gas prices. He said we use one study. Let me give another study. This is an EPA staff white paper, study of unique gasoline blends, effects on fuel supply and distribution and potential improvements: Replacing the RFG oxygenate mandate with the renewable fuel mandate will result in a shift of ethanol use from RFG to conventional gasoline, while ethanol distribution costs and blending costs should decrease. However, this will be offset to some extent by an increase in ethanol production costs. For the purpose of this study, we have assumed, based on previous analyses, as discussed in the cost memorandum in the docket, that ethanol production costs would be increased by 15 cents per gallon relative to today's ethanol prices. So it shows there that the cost of ethanol is apt to go up.

With respect to the study that he mentioned, the Energy Information Administration report, that report used national averages. It does not adequately predict gas prices in California and other States.

The report he referred to did not model how infrastructure problems and market concentration can drive prices up.

So, what California is saying is we will not have the infrastructure in place, and that alone will create price spikes.

With respect to his comment on the 90-day amendment, the majority leader knows I have been interested in this for a long time. A 90-day waiver has never, ever, by anyone, been offered to me. I will be very happy at the appropriate time to call up my amendment, which is a 90-day waiver. I hope, then, that that 90-day waiver will be agreed to. But at no time was a 90-day waiver ever mentioned to me.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I think we are having a good debate. I think it is informative to my colleagues. I thank and compliment my colleague from New York, Mr. SCHUMER, and my colleague from California, Senator FEINSTEIN, for their leadership in bringing out an amendment and exposing this for what it is. It will greatly increase costs, a couple of costs.

I haven't heard too many people talk about what is very obvious. We have already agreed to an amendment that extends the ethanol subsidy in the Tax Code. That is just a fact. We have extended it, I believe, for 10 years. Ethanol now receives a subsidy of 53 cents per gallon. It doesn't pay an excise tax that goes to the highway trust fund. That is already the case. That is present law. We just extended that for 10 years.

Presently, we are producing a little less than 2 billion gallons of ethanol a year. So that costs the trust fund a little over $1 billion. The trust fund loses that because we give ethanol the advantage over all other fuels. That is about $1 billion. OK, that is present law.

What the bill does if you look on page 189 of the bill, is increase the ethanol mandate. Right now, we are producing about 1.9 billion barrels per year. It says in the year 2004 it goes to 2.3 billion. It doesn't sound like a lot, but that is about a 20-percent increase.

Then, over the period of time to the year 2012 it goes to 5 billion. We go from 1.9 billion to 5 billion. That is a little less than a 200-percent increase in ethanol. So ethanol gets it both ways. They have the subsidy, so much per gallon it doesn't pay in excise taxes that all other motor fuels pay, and now we are going to mandate in addition that subsidy: Oh, yes, now refiners, you have to make 5 billion gallons, which is over two times what we are making right now.

That has a cost to it. Some people say there is a cost of an additional 4 cents or 5 cents a gallon. I think it probably does because it is more expensive to make than gasoline, probably to the tune of about 20 cents a gallon. But it also has a cost to the highway trust fund. I have heard people say when we take up the budget we are going to have to add billions of dollars to the highway trust fund. If we keep the ethanol mandate as it is, in addition to the tax subsidy, but increase the amount that must be produced from current law into a Federal mandate of a figure that I guess came from the sky—all of a sudden we are going to do 5 billion gallons—that means we are going to have to more than double the capacity of the plants we have right now.

The highway trust fund, which is presently losing in excess of $1 billion, is going to be losing in excess of $2.5 billion, if my quick math is right. If you are talking about 53 cents a gallon, and if you are going to make 5 billion gallons, that is over $2.5 billion that the highway trust fund is not going to get every year.

I believe ethanol vehicles—and they may be just great and it may be a fantastic fuel, and I am not arguing that—do damage to the roads. The highway trust fund is to repair the roads. Whether the cars are running on diesel or gasoline or ethanol, those roads have to be maintained and repaired. We are creating a giant gap or loophole for the highway trust fund that is going to be ever expanding by this ever-increasing mandate.

My point is that I think we can have it one way or the other. We can probably afford one, or maybe the other, but I question both. If we have a tax subsidy—and I see my friend and colleague, the former chairman of the Finance Committee, for whom I have the greatest respect—the tax subsidy giving the 53 cents exclusion from the highway gasoline tax is already in the law, and it has been extended. Fine. That is one big one. But to also say we should have a mandate to more than double the production I think is a lot to ask. That is a lot to ask of the highway trust fund, which most of us want

to make sure we keep our highways maintained.

We are creating a big void. We are facing a lot of highway work that needs to be done. But where is that money going to be coming from? For awhile some people said maybe we will have general revenues pick it up. I think there is some legitimacy in having a highway user fund, having users pay for highway maintenance. That is the whole purpose of having a gasoline tax or diesel tax; it is for highway maintenance. To take one particular fuel and say we are going to exclude it from a very significant portion of the highway tax is one thing. Now we are going to have a mandate that, oh, yes, you have to increase your production by another 160 percent. I just question whether it is affordable, whether it is affordable for the highway trust fund, and whether it is needed.

I do not mind encouraging alternative sources of fuel. I certainly don't mind helping agriculture. I certainly don't mind doing anything that will reduce our dependency on foreign sources of fuel. But I look at this and I say: Wait a minute, aren't we going to far? Aren't we doing too much? We are doing the tax exemption. Do we really need a mandate that says you have to produce that much? I ask: Can we make this 2.3 billion gallons in the year 2004? Can we really increase production in all these plants in 2 years? At that point, we are at 2.3 billion. Maybe we can. In another 8 years, can we double it? Heaven forbid that we let the marketplace decide which fuel we should be burning.

Mr. SCHUMER. Mr. President, will my colleague from Oklahoma yield for a question?

Mr. NICKLES. I am happy to yield.

Mr. SCHUMER. I have been following his very cogent arguments. I am glad we are on the same side on a few issues. Hopefully, there will be many more.

He made two points. I would like to ask him if I am wrong. There are double contradictions here. One is that we are going to raise the price of gasoline, as we would with the gas tax. But we are actually going to deplete the trust fund at the same time we lose the gas tax, whereas, at least the gas tax has the purpose of the user tax.

As my friend from Oklahoma accurately stated, at least that does improve the fund. We get hit both ways. There is a second sort of the anomaly here. I haven't seen anything like it. We have a large subsidy for a product—I think he mentioned 53 cents a gallon; that is huge already for the motorist—to help the farmers. I don't know anything else that gets up to that extent. At the same time, we are now forcing people to buy it with that subsidy.

Am I correct that those are two separate contradictions within this bill, two separate anomalies?

I ask my colleague from Oklahoma, has he ever seen anything such as this in his years of making sure the free market policies are pursued for our country?

Mr. NICKLES. I appreciate the question. I have seen something like it. I will allude to it. I hope we can fix it at a later date. That deals with the renewable portfolio standards that are also in this bill.

To show you how similar they are, in that particular section of the bill, there is a mandate that 10 percent of the electricity be produced from renewable fuels. Incidentally, if you can't do that, you can buy a credit for 3 cents per kilowatt hour. That is the price of electricity in the wholesale market today. In some cases, it is a lot less than that. You can get out of that mandate by giving the government 3 cents per kilowatt hour. Wow. That is expensive. That is the equivalent of about a 5-percent increase in the electricity bill.

I see this as very similar. This says: OK. Buy a lot more ethanol—up to 5 billion gallons—more than double what we are buying right now. And, oh, yes. We are going to subsidize that, too. We are going to mandate that you buy it and subsidize it. But consumers are going to pay for it. They are going to pay for it by having a shortfall in the highway trust fund to the tune of over $2.5 billion a year.

Obviously, if you are exempting 3 cents a gallon and mandating that you manufacture 5 billion gallons, the trust fund is coming up $2.6 billion short per year. As consumers of fuel, users of the highways are coming up short. That means other fuels or general revenue is going to have to make up the difference. It just doesn't fit.

I happen to think there is a reason why people say, well, we need the 53 cents per gallon to make ethanol competitive with other fuels. In other words, it is more expensive. I think that is obvious.

I understand the proponents, and I respect the proponents, but they are saying we need the tax subsidy to make it competitive. It is more expensive to produce ethanol than it is gasoline. So we give them the tax subsidy so they can afford to do it. We are now going to mandate that they more than double the production. If it is more expensive to make, that means the price of gasohol is going to go up. I think the estimates of 4 or 5 cents a gallon are probably accurate. That may not sound like very much. It is probably about a 6-percent increase in gasoline costs. Consumers are going to pay for that.

I was shocked. I didn't know until I heard Senator FEINSTEIN mention that under current law there is an import fee on ethanol. I asked my staff. I started looking for it. Where is it? It is not in here. It is in current law.

The ethanol industry has already been successful in having protectionism, saying we can't have ethanol imports. There is only domestic product. Guess what. We import a lot of gasoline. We import a lot of oil. We import a lot of fuel. Right now we are saying we are going to mandate this much more production but we are going to keep the protection.

I am troubled by that. Consumers will pay. If ethanol were competitive, it wouldn't need a tax subsidy and it wouldn't need us mandating 5 billion gallons by the year 2012. It costs more to produce. Consumers will pay it. This bill is going to cost consumers.

I know there are charts floating around here on the cost per gallon. I think 5 or 6 cents per gallon is a good estimate.

To answer my friend's question, is there another example of that? Yes. It is in the renewable portfolio standard. It is a 3 cents per kilowatt hour credit which we mandate in this bill. Senator BREAUX and I and others will have amendments to reduce that from 3 cents per kilowatt hour to 1.5 cents per kilowatt hour, which is the same amount the Clinton administration proposed. We will reduce the penalty—the tax—that is in the bill.

This bill we have before us right now increases the price of gasoline because of the ethanol standard, and it increases the price of electricity because of the renewable portfolio standards.

I compliment my colleagues from New York and California for trying to address the gasohol tax increase that will hit all consumers, all gasoline purchasers. Later on we will have an amendment to hopefully reduce the electricity penalty that is in the bill as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. I thank the Chair. I appreciate the desire of the Senators from New York and California to protect their States and their constituents.

I think it is unfortunate that so much misinformation about ethanol exists today. It has been distributed and is being distributed even as we speak. There is so much misunderstanding about what ethanol's role is, and also ethanol's potential in our energy future.

Today, the United States consumes 25 percent of all the oil that is produced in the world. One out of every four barrels of oil produced in the world is consumed in the United States.

Given the significance of the transportation sector in this country, one out of every seven barrels of oil goes into American gasoline. If those who continue to oppose any kind of alternative have their way, the policy of this country is going to be basically hang on and hope—hang on to the status quo, hang on to the present consumption of oil and gasoline, hang on to the present energy consumption patterns of this country and hope nothing changes.

I find it disappointing that we focus on these alternatives as though they are somehow going to impose something more onerous and more expensive on the American people when, in fact, if you look realistically at the future, 10, 20 years from now, the most expensive policy for the American consumer is for us to do nothing.

The notion that we will be able to continue to consume one-fourth or more of the world's oil production, the notion that prices will remain the same as today's prices, that there won't be disruptions, and to put ourselves in a situation where we will be faced with either supply disruption or price increases of major proportions, I think is putting our head in the sand and hoping for something that goes beyond what is realistic.

Despite the efforts of the manager of this bill, basically the position of the Senate on this bill is to do nothing in terms of bringing about any real reduction in the consumption of oil and gasoline or the development of real alternatives. We said no to the CAFE standards. We said no to basically any meaningful change or development of any alternative. Why? Because, as the opponents say, any alternative, any change in our practice, involves some dislocation and some price increase on a temporary basis—not nearly what this proposes. They may involve some need to refigure our supply. Anything that changes the status quo, therefore, changes some aspect of this system that we keep treating as though it is in place and it is secure for years to come.

How long, realistically, do we think we are going to be able to continue to have all the oil that we wish to consume, at the prices we are paying today, with no disruptions, and no price spikes? In fact, if we don't start developing alternatives, such as ethanol and other biofuels, we are going to guarantee that we are in the same predicament 10 years from now or 20 years from now. I guarantee you that those prices will not continue to be stable.

In Minnesota, we have been practicing an alternative for the last 5 years mandated by the Minnesota Legislature, which is a 10-percent blend of ethanol in every gallon of gasoline sold in the State of Minnesota. That ethanol is blended. Ten percent is used by every vehicle that puts gasoline into its tank. It requires no change in engines produced by General Motors, Ford, or any other company, foreign or domestic.

In fact, the engines in vehicles that use 10 percent ethanol requires no modification whatsoever. They have no supply problems.

The cost of a gallon of gasoline in Minnesota today is 20 cents less than a gallon of gasoline in California. It is a penny more than in New York. It is 5 cents a gallon less in Illinois, and it is less in our surrounding States that don't have this mandate. That is just the beginning.

My office leases a vehicle, a Chrysler Suburban, that travels around Minnesota. It consumes 85 percent ethanol—a fuel that is blended 85 percent ethanol and 15 percent gasoline. That is priced 20 cents less than a gallon of unleaded fuel in Minnesota today—meaning 40 cents less than a gallon in California, 10 cents less than a gallon of gasoline in New York, and so on.

Yes, this is a subsidy. Yes, this is an incentive provided to make the conversion to this kind of fuel. Again, if we don't provide some kind of incentive, we will have no alternative form of energy which is going to be competitive with what it is today.

On the other hand, if we don't follow the direction in this legislation that we begin to make this transition to having a supply of ethanol that will actually not just displace MTBE—that is far too limited a view of the future of ethanol. Ethanol could not only supplant MTBE, as this legislation encourages, but also ethanol could supplant gasoline itself.

As I said, right now in Minnesota, 10 percent of the gasoline has been supplanted by ethanol.

That could be 20 percent if we had the supplies available that could be applied across this country. And 85 percent of ethanol can be used in 2 million vehicles across the country. Imagine what it would do 10, 20 years from now to the energy independence of this country if we were using 20 percent, 40 percent, 60 percent ethanol instead of gasoline.

As I say, these changes are not going to happen overnight. We are not going to be able to find ourselves in an energy crisis down the road and be able to make these kinds of changes immediately. If we do not start now, if we do not have a goal of 10 years from now reaching a manageable amount of product that will encourage others to get into the market—for example, I hear criticism that one company now controls 41 percent of the market for ethanol in this country.

Twenty-five years ago that same company controlled 99 percent of the ethanol in this country, and that number has gone down every single year thereafter as more and more producers have gotten into the ethanol market. The production concentration in that industry is diminishing. It will continue to diminish with or without this mandate, but it will certainly accelerate the reduction in concentration as more and more producers get into the market.

We hear about supply difficulties and questions about supply which cannot be answered today for a market that will exist 10 years from now. But to think we are transporting oil and oil products from the Middle East, from South America—thousands of miles to our ports—to States such as California, which is now importing 75 percent of their MTBE by barge from Saudi Arabia, and we are saying that the supplies cannot be transported from the middle section of this country to either coast at a competitive transportation price boggles the mind and defies imagination.

Furthermore, I guarantee you, with this kind of mandate, the agricultural sector in California, which is enormous, and the agricultural sector in New York, which is very substantial, will move to producing the kinds of crops which can then be converted into ethanol. I guarantee producers and refineries will sprout in those States and elsewhere across this country to supply this additional product.

So this is not a static situation. It is a dynamic one, and one which—with this mandate, with this encouragement—has tremendous opportunity over the course of the next decade and thereafter to meet a significant part of our energy needs, our consumption of gasoline.

Finally, in terms of liability protection, I happen to agree with those who are concerned about that. I am willing to have that stripped from the bill. But this amendment, as it is proposed, does not just deal with some of these flaws; it would eliminate the entire ethanol provision entirely. So if there are particular concerns, let's deal with those particular concerns. But I think just to wipe this out entirely is shortsighted and, as I say, will result in American consumers paying higher prices for gasoline or gasoline products.

Finally, I wish to make one last comment on the highway trust fund. Again, I agree with the critics of this measure who say our actions will result in less dollars going into the highway trust fund. That is true. But anything that results in the lessening of the consumption of gasoline in this country results in fewer dollars going into the highway trust fund. If you follow that logic, then, it means, in order to maximize dollars going into the highway trust fund—which is important to Minnesota and every other State—we ought to lower the fuel efficiency of our vehicles, we ought to drive them more miles, and we should do whatever we can to burn more gasoline because that results in more dollars going into the highway trust fund.

I suggest we are better off to reconsider that policy, to reconsider whether we want the highway trust fund to be dependent on the number of gallons of gasoline consumed, when we know what the effects of that are on our economy elsewhere.

So I say it is better to change the policy over time, better to change the supplement, the funding mechanism of the highway trust fund, rather than sacrifice a sound alternative energy policy on that altar.

Again, in conclusion, if we do not start this now, if we do not start encouraging this transition, we are going to be nowhere in 10 years, we are going to be nowhere in 20 years, except where we are today with our energy dependency. And I guarantee we will have no solution to our energy predicament.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I only intend to take 4 or 5 minutes. I ask unanimous consent that the Senator from Iowa be recognized following my remarks.

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. Mr. President, I certainly will not object. I see colleagues on the floor. I ask unanimous consent that after Senator DORGAN and Senator GRASSLEY—and I gather Senator MURKOWSKI also is going to speak; is that correct—and the Senator from Alaska speaks, that I then be recognized to speak after Senator MURKOWSKI, in that order.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, what is the order?

The PRESIDING OFFICER. The Senator from Minnesota has requested that at the conclusion of Senator DORGAN's comments and Senator GRASSLEY's comments and Senator MURKOWSKI's comments, he would be recognized.

Mr. REID. I have no objection, but I do say that we have, under postcloture, 30 hours. There is going to come a time—certainly we are not approaching it quickly—but somebody will have to move either to table or to set a definite time for voting on this amendment because I do not think it is fair to spend the whole 30 hours on this one issue.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will be very brief. I thank my colleagues.

Let me say that some issues are less complicated than they seem, and this, I think, is one of those issues. The ability to take a kernel of corn or barley, for example, take the starch from it, break it down into its simple sugars, ferment it into a drop of alcohol, and use it to extend America's energy supply makes great sense. Being able to take a drop of alcohol from a kernel of corn or barley to extend America's energy supply, and still have the protein feedstock left to feed animals, also makes great sense. We will produce ethanol in substantial quantities. The question is not whether it will be done; the question is when.

We produce a substantial amount of energy right now, but not nearly as much as we could from ethanol. We will, at some point, dramatically increase the ability to produce our own fuel. Producing renewable fuel that we can use for gasoline, the fuel we can use in other ways to extend America's energy supply, just makes sense.

The provision in this legislation makes good sense as well. It will substantially increase the quantity of ethanol that is produced in our country, and do it more quickly than we otherwise could.

One of my colleagues, Senator NICKLES, said: Let the market decide these things. Well, it is interesting that the market apparently has decided that we should import 57 percent of our oil supply, much of it from Saudi Arabia. Is that a market decision that makes a lot of sense? Is that a market decision that puts us in peril of someday waking up in the morning to find out that some heinous act by a terrorist has interrupted the energy supply from the Saudis or the Kuwaitis, and all of a sudden America's economy is flat on its back? Is that a marketplace decision that makes good sense? No, it does not make good sense. So, in a number of ways, we are trying to move in different directions.

This debate is about the replacement of MTBE. All of us understand that in various parts of the country it has been showing up in ground water. We understand that this has to be dealt with. And that gives rise to this provision in the energy bill. But this provision in the energy bill, in my judgment, has much more significance than just that issue.

I think my colleague from Minnesota, Senator DAYTON, just described that. It is not just about a replacement for MTBE; it is about additional production of energy in our country. It is about growing our fuel on a renewable basis year after year. It is about another market for family farmers who produce crops that can be turned into alcohol, and then use the protein feedstock later for animal feed. It just makes good sense for our country to do this.

I know there are some who have some heartburn about this provision, and I certainly respect their views. There are some who object to everything that is done for the first time. I am not suggesting that is the case with the opponents here, but we are going to march, inevitably, in this direction. The question for us is: Do we do it sooner, or do we do it later?

This is the time when we decide that we want additional production from renewable sources.

And yes, that is ethanol. It is good for our country, for the environment, and for our family farmers. Frankly, it is even good for those who are objecting to it today.

I hope we will reject this amendment, as we should, and continue to keep this provision in the bill.

I thank my colleague from Iowa for allowing me to proceed.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, before I speak about the volume of misinformation we have on the renewable fuel standard, there were a couple statements made in the debate by the Senator from Oklahoma that I want to address.

No. 1, don't assume ethanol is going to increase the cost of gasoline. At least in my State, you find in most cases ethanol in gasoline will sell for 2 cents a gallon cheaper than gasoline without ethanol. If that is not the case, it is the same price. Very rarely do you find anytime that ethanol in gasoline causes the price of that gasoline to be higher than gasoline without ethanol.

The other misinformation we ought to clear up is the use of the word ''subsidy.'' Because of the consumer tax on gasoline not being as high if it has ethanol in it as without ethanol, that is a lower rate of taxation. The subsidy, as we use it in this body, refers to money coming from the Federal Treasury to benefit somebody. When a consumer pays less tax on a gallon of gasoline because it has some ethanol in it, that is less tax. Do the proponents of this bill suggest we ought to raise the tax on gasoline because there is ethanol in it? Some of these Members I hear abhor the idea that there ought to be any increase in any tax, let alone an increase in the gasoline tax.

Those are two things I wanted to clear up.

Now, about this misinformation, I know my colleagues who are supporting this amendment are very intelligent people. I don't think they are purposely misleading us. There has been some propaganda spread by some industries in this country, and it has been picked up by some Members of Congress. They have lent their credibility and voice to this antireformulated fuels standard in a way that, quite frankly, does not do anybody any good. This misinformation campaign can help only two interests: It can help producers of MTBE, which production contaminates our drinking water supplies—and it does this in the States of California and New York; that has been very well documented; secondly, Middle East producers of both oil and MTBE that seek to tighten a very dangerous grip they have upon America's energy security.

How does this misinformation campaign help MTBE producers? That is because the reformulated fuel standard includes an MTBE ban. The MTBE producers know that the entire reformulated fuel standard will unravel if they can chip away at it with some amendments.

A broad coalition of interests helped produce this balanced compromise we have before us. This coalition may very well be unprecedented. The coalition consists of farm groups, petroleum and renewable fuel producers, environmental groups, and State environmental agencies. I had an opportunity to address a group where the American Petroleum Institute had one of their employees. I had to tell him, when I heard of their supporting this compromise, it is a good thing I had a good heart. Otherwise, I would have passed out as a result of it because they have never been with this group of people in the past. Here they see the need for renewable fuels as well.

They all agreed to a compromise proposal embodied within the renewable fuel standard that in the past seemed impossible to accomplish.

What do MTBE producers do? They get their consultant, Hart/IRI, to cook numbers to make it look as if requiring ethanol usage will cause motor fuel prices to go up by almost 10 cents a gallon. This is blatantly false. The truth is, according to the Energy Information Administration, requiring ethanol under the renewable fuel standard

will increase motor fuel costs, if at all, by one-half a cent to a penny per gallon.

So we have had a couple Senators address this issue in a Dear Colleague letter. I will quote from the letter, ''MTBE Consultant Misleads Members on Ethanol Debate.'' Let me share with you the letter from Senators JOHNSON and HAGEL. I quote:

Senators from New York and California have distributed charts and spoken on the floor, claiming that the renewable fuels standard will increase consumer costs by 4–9.75 cents per gallon. The source of this data is the MTBE consulting firm, Hart/IRI, which claims it based its cost estimates on data from the Energy Information Administration.

Further quoting:

[The Energy Information Administration] has completed two analyses. . . . The first, found that the MTBE ban would increase gasoline costs 4–10.5 cents per gallon, while the renewable fuels standard could increase gasoline costs by 1 cent per gallon in reformulated gasoline areas, and .05 per gallon overall.

I want my colleagues to listen very carefully to the next sentence from this letter:

Hart/IRI lumped these costs together and attributed . . . them to the renewable fuels standard, making that provision appear to be roughly ten times more expensive than it is.

Continuing to quote:

Since the fuels compromise bans MTBE, Hart/IRI has every incentive to exaggerate and misrepresent the cost impacts on the legislation. It is ironic and unfortunate that some members—whose states have already banned MTBE, because it has poisoned their drinking water—chose to use this MTBE consulting firm's analysis rather than relying upon the objective EIA numbers.

We ought to repeat that sentence:

It is unfortunate and ironic that some members—whose states have already banned MTBE, because it has poisoned their drinking water—chose to use this MTBE consulting firm's analysis rather than relying upon the objective EIA numbers.

We proponents of this renewable fuels standard are trying to help consumers in California and New York. We are trying to reduce their dependence upon MTBE, because it poisons the groundwater, and oil, and both of those come from the Middle East. In fact, we are trying to do so in a manner directly advocated in 1999 by the two California Senators and the senior Senator from New York when the Senate approved Senator BOXER's resolution calling for the ban of MTBE and replacing the MTBE with renewable ethanol. That is what the resolution said.

Yet today our efforts are opposed because our legislation would increase the use of ethanol made by farmers and ethanol producers in America's Middle West as opposed to getting our energy from the Middle East.

Our opponents claim they are worried about supply shortages and price spikes. Yet how can any Member of this body be more worried about ethanol from the Midwest than they are about MTBE and oil from the Middle East? How can anyone oppose America's farmers and ethanol by using bogus information from an MTBE consultant. It is unbelievable, isn't it?

Mr. President, what the MTBE consultant did was distort an analysis of banning MTBE included in an earlier proposal, not the proposal pending before the Senate. The Energy Information Administration did two analyses. The outdated one concluded that an MTBE ban under the old proposal would increase consumer costs by 4 to 10 cents a gallon. Requiring the use of ethanol under the old analysis would cost at most a penny a gallon.

A second Energy Information Administration analysis was conducted, but this time it focused on the pending legislation. The Energy Information Administration concluded that banning MTBE would increase the cost of motor fuel by about 2 to 4 cents per gallon, and again it found that requiring ethanol would increase consumers' cost by less than one penny a gallon.

Again, who are we to believe, the MTBE industry, which will lose if MTBE is banned, or the Energy Information Administration?

Let me critique this for my colleagues with a closer look. Those who are offering killer amendments to this renewable fuel standard point out in detail, State by State, the price increases consumers will supposedly suffer if the renewable fuel standard is adopted.

The bogus Hart/IRI analysis concluded, for instance, Arizona consumers would pay 7.6 cents more per gallon; Maryland, 9.1 cents; Texas, 5.7 cents; Pennsylvania, 9.1 cents; New York, 7.1 cents; California, 9.6 cents, and I can go through the 50 States.

When one looks slightly below the surface and gives the Hart/IRI study even a moment's attention, one will see but half a cent or a penny of these predicted price hikes are related to the ban of MTBE and not the cost of requiring ethanol.

Our renewable fuel standard opponents want us to fear price hikes, but they do not want us to figure out that the price hikes are driven by banning MTBE. Instead, the aim is to mislead us into thinking ethanol causes the price hikes, but by using this pro-MTBE consulting firm study and by subtracting the half cent or penny-cost increase supposedly relating to ethanol, we find that what our New York and California colleagues are really arguing is that if we ban MTBE, the cost of gasoline will go up by 8.6 cents per gallon in California and by 6.1 cents per gallon in New York.

What is the logical conclusion? Isn't that simple? If we are to believe the studies used by our colleagues from New York and California, the only conclusion we can draw is they do not want to ban MTBE because the price of gas will go up.

The opponents of the renewable fuel standard cannot have it both ways. They have to make up their minds. Either they want to ban MTBE to protect drinking water or they want to keep using MTBE so prices do not spike. The bed was made with Hart/IRI; now lay in it.

Mr. President, surely we can put a little more care into debate so important as our energy security. Some of our colleagues who are opposing the renewable fuel standard mentioned in passing that there is cleaner fuel at less cost and that we do not need to use oxygenates. Really.

In 1991, the California Energy Commission compared the cost of ethanol-blended motor fuel with motor fuel that included no oxygenates, neither ethanol nor MTBE. In short, the California Energy Commission found that nonoxygenated fuels could cost more per gallon than ethanol-blended motor fuels.

I note that the California Energy Commission analysis was done when annual ethanol production capacity stood at less than 1.7 billion gallons, and it was when skeptics said there would not be enough ethanol to replace MTBE. Today ethanol production capacity stands at 2.3 billion gallons per year.

I hope that settles some of the fears the Senator from Oklahoma had about whether we have the capacity to do it. We have unused capacity right now. We also have new plants coming online, and production capacity will increase to 2.7 billion gallons per year by the end of December and climb to between 3.5 billion and 4 billion gallons by the end of 2003.

I suggest that given the large increase in ethanol capacity, ethanol-blended motor fuel would be even cheaper than estimated by the California Energy Commission.

Moreover, even the recent Energy Information Administration study concluding motor fuel could go up a penny if ethanol is required may be too high because it does not take into consideration the efficiencies of the credit trading program.

Our California and New York colleagues argue that nonoxygenated motor fuel is cheaper than ethanol-blended fuel, but that contention is just the opposite of what the California Energy Commission reported. Our colleagues choose not to take their information from the California Energy Commission and they choose not to take their information from the U.S. Energy Information Administration. They would rather take their information from an MTBE consultant. Why would they do this? I wish I knew.

I want to share another independent source of energy analysis produced by the Department of Energy's Office of Transportation Technologies. These two draft studies underscore the extreme importance of expanding renewable fuel use, particularly now that we aim to ban MTBE because it poisons our water.

In short, these analyses conclude that alternative and replacement fuels leverage lower prices for consumers

and reduce the impact of OPEC oil-producing nations.

Mr. President, I ask unanimous consent that these two economic analyses of the benefits of replacing gasoline with alternative fuels be printed in the RECORD.

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

OIL PRICE BENEFITS OF INCREASING REPLACEMENT/ALTERNATIVE FUEL MARKET SHARE, DRAFT ANALYSIS, OFFICE OF TRANSPORTATION TECHNOLOGIES, U.S. DEPARTMENT OF ENERGY

Increasing the market share of alternative and replacement transportation fuels would have significant energy security and oil market benefits for the United States. Some of these benefits will occur even if use of the fuels is induced by regulations, subsidies, or demonstration programs. Additional energy security benefits would be generated if the fuels are competitive with petroleum fuels in at least some market segments.

Competitive alternative and replacement fuels produce energy security benefits in two principal ways:

First, by reducing the quantity of petroleum consumed and imported, they reduce the vulnerability of the economy to oil price shocks.

Second, by increasing the price-responsiveness of oil demand, they reduce the market power of the OPEC cartel, making it more difficult for OPEC to raise prices and the sustain those price increases.

Today alternative and replacement fuels account for 3.6 percent of total U.S. gasoline demand. The majority of this is blending stocks used in gasoline. Methyl tertiary butyl ether, MTBE, which is predominately derived from natural gas, comprises 2.6 percent of gasoline demand. Ethanol produced from renewable energy sources, which is primarily blended into gasoline, comprises 0.7 percent of gasoline demand. The use of MTBE is driven by clean air requirements, while ethanol use is subsidized by a partial exemption from motor fuel excise taxes. Alternatives to petroleum-based fuels, such as propane, compressed natural gas, alcohols, electricity and biodiesel comprise only 0.3 percent of total U.S. gasoline use.

Even these modest levels of alternative and replacement fuel uses are providing some energy security benefits. In a very preliminary, draft market simulation of world oil markets, we have estimated the world oil price impacts of U.S. alternative and replacement fuel use. The following results were obtained.

The present 3.6 percent market share of alternative/replacement fuels produces an approximately $1.00/barrel reduction in oil prices from what they would be if alternative/replacement fuels were not used at all. At current U.S. oil consumption levels of 6.8 billion barrels, this level of alternative/replacement fuel use results in a savings of approximately $7 billion on an annual basis.

If the U.S. were to achieve the 10 percent replacement fuel goal of the Energy Policy Act of 1992, oil prices could be reduced by approximately $3.00/barrel. At current U.S. oil consumption levels of 6.8 billion barrels, this level of alternative/replacement fuel use would result in a savings of approximately $20 billion on an annual basis.

THE IMPACTS OF ALTERNATIVE AND REPLACEMENT FUEL USE ON OIL PRICES—DRAFT

(By David L. Greene)

This memorandum presents estimates of the long-run oil market benefits of increased use of alternative and replacement fuels by highway vehicles in the United States. No attempt is made to estimate the costs of increasing use of alternative energy sources. Potential benefits in the event of possible future oil price shocks are not addressed. Nor are likely environmental benefits considered. Current use of alternative and replacement fuels is estimated to reduce total U.S. petroleum costs by about $1.3 billion per year (about $0.29 per barrel). Cumulative savings from 1992 to 2000 are estimated to be $9 billion. Increasing alternative and replacement fuel use to 10% of motor fuel use by 2010 is estimated to increase oil market benefits to $6 billion per year ($0.68/bbl), for a 2000–2010 cumulative savings of $35 billion. These estimates were made using a very simple model of world oil markets and are contingent on the assumption that historical and projected OPEC production levels do not change.

OIL MARKET BENEFITS OF ALTERNATIVE AND REPLACEMENT FUELS

Displacing petroleum with alternative and replacement transportation fuels helps hold down petroleum prices in two ways. First, reducing the demand for petroleum makes it harder for OPEC to raise oil prices. Although the actual impact will depend on precisely how OPEC responds, a reasonable rule of thumb is that a 1% decrease in U.S. petroleum demand will reduce world oil price by about 0.5%, in the long-run. Short-run (1 year or less) impacts would be even greater, due to the short-run inelasticity of oil supply and demand. The Energy Information Administration offers the following as a rule of thumb for short-run supply reductions.

''For every one million barrel per day (1 MMBD) of oil disputed, world oil prices could increase by $3–5 barrel.'' http://www.eia.doe.gov/emeu/security/rule.html

Demand reductions would have the exact opposite effect, assuming OPEC took no action to cut back production in response. One MMBD would be about 5% of U.S. oil consumption, whereas $3–5 per barrel would be a 15–25% price increase, if oil cost $20 per barrel, suggesting a short-run elasticity about ten times as large as the long-run elasticity. This leads us to the second oil price benefit of alternative and replacement fuel use, the potential for increased price elasticity in case of a supply disruption.

The existence of an alternative source of liquid fuels supply can also increase the elasticity of oil demand by providing a potential substitute for oil in the event of a price shock caused by a sudden reduction in supply. It is precisely the inelasticity of oil demand and supply that makes price shocks possible. Increasing the elasticity of demand mitigates the impact of a supply shortage on prices.

ESTIMATING THE LONG-RUN OIL PRICE BENEFITS

The long-run oil market benefit of alternative and replacement fuels can be approximately estimated by a simple simulation model of the world oil market. The model is comprised of two demand equations and two supply equations representing U.S. and Rest-of-World, and a assumed level of OPEC output. All supply and demand equations are linear and depend on current price and lagged quantity. A year-specific constant term is used to calibrate the equations to exactly match the 2000 Annual Energy Outlook Reference Case projections. Since the equations are linear, elasticity increases with increasing oil price and decreases with increasing oil demand. Representative elasticities are shown in table 1 for the U.S. and ROW at various oil prices and 1998 quantities.

TABLE 1.—LONG-RUN PRICE ELASTICITIES OF WORLD OIL MODEL

	U.S. demand	U.S. supply	ROW demand	ROW supply
MMBD	19.41	8.96	58.32	36.00
Price Slopes	−0.329	0.138	−0.966	0.376
ELASTICITY ESTIMATES				
Oil Price:				
$10	−0.17	0.15	−0.17	0.10
$20	−0.34	0.31	−0.33	0.20
$30	−0.51	0.46	−0.50	0.31
$40	−0.68	0.61	−0.66	0.41
$50	−0.85	0.77	−0.83	0.51

The historical data and the 2000 AEO projections reflect the current levels of alternative and replacement fuel use. The impact on oil prices is therefore best answered by answering the question, how much would prices rise if there were no alternative and replacement fuel use? This counterfactual analysis also requires an assumption about OPEC behavior. It is assumed that there is no change in OPEC behavior. In other words, oil supply by OPEC is held constant at historical and AEO 2000 projected levels. Given the relatively small amounts of alternative and replacement fuel use, this assumption seems quite reasonable. Of course, in reality OPEC could increase or decrease output. By increasing output, OPEC would lower prices further, increasing the oil market benefits. If OPEC cut production, say enough to restore oil price to the prior levels, there would still be oil market benefits, though they would be more difficult to quantify. First, at lower production levels OPEC would have a smaller market share and thus less market power than before. This would make it more difficult for OPEC to create a price shock, to raise prices further, and to maintain discipline among its members. Second, the loss of wealth by the U.S. economy due to monopoly pricing would be reduced, because the U.S. would be consuming less imported oil. Thus, if OPEC reacted to increased U.S. alternative and replacement fuel use by further production cutbacks to restore the price level, the nature and magnitude of oil market benefits might change, but there would still be significant benefits.

Two alternative ''what if'' scenarios were analyzed: (1) what if there had been no alternative or replacement fuel use after 1991? 2) what if, starting in 2001, alternative and replacement fuel use increased to 10% of U.S. motor fuel use by 2010? Actual U.S. alternative and replacement fuel use is shown in table 2. Alternative fuel use increased from 230 million gallons of gasoline equivalent in 1992 to 341 million gallons in 1999, with usage of 368 million gallons projected for 2000. Replacement fuel use increased from 2,106 million gallons in 1992 to 4,311 million gallons in 1999 with usage of 4,388 projected for 2000. As a fraction of total motor fuel use, alternative and replacement fuels amounted to 1.57% in 1992 and comprised 2.71% in 1999.

TABLE 2.—ESTIMATED CONSUMPTION OF VEHICLE FUELS IN THE U.S., 1992–2000

[Millions of gasoline-equivalent gallons]

Fuel	1992	1993	1994	1995	1996	1997	1998	1999	2000
Alternative	230	293	281	277	296	313	325	341	368
Oxygenates	2,106	3,123	3,146	3,879	3,706	4,247	4,156	4,311	4,388
Total Motor Fuel	134,231	135,913	140,719	144,775	148,180	151,598	156,839	159,171	163,149

Source: U.S. DOE/EIA, 2000, Alternatives to Traditional Transportation Fuels 1998, table 10, http//www.eia.doe.gov/cneaf/solar.renewables/alt–trans–fuel98/table10.html.

The first scenario assumes that there was no alternative or replacement fuel use by highway vehicles, and that petroleum use (before oil market equilibration) would increase by exactly the amount of actual alternative and replacement fuel use. Assuming OPEC production would not have changed, new world oil prices, supplies and demands were computed for the higher level of oil demand. The resulting price increases are modest, because the 0.14 to 0.29 million barrels per day (mmbd) of U.S. alternative and replacement fuel use is small relative to the 67.5 to 77.9 mmbd of world petroleum consumption over the 1992–2000 period. In 1992, oil prices are estimated to be $0.08/barrel higher, rising to an $0.16/bbl increment by 1999. Implied total oil cost savings from alternative and replacement fuel use rise from $500 million in 1999 to $1.3 billion by 2000, with a cumulative total savings of 9.1 billion by 2000 (undiscounted 1998 dollars).

The impacts of increasing alternative and replacement fuel use to 10% of motor fuel use by 2010 are estimated in a similar way. The AEO 2000 forecast includes increasing levels of alternative and replacement fuel use, but the projected levels are far lower than 10% of total motor fuel use. Rather than create an alternative world and U.S. oil market projection, it is assumed that the AEO 2000 projection contains no alternative or replacement fuel use. U.S. petroleum demand is then lowered by an amounts which increase gradually to 10% of motor fuel demand in 2010. Motor fuel demand is assumed to increase at the rate of 1.5% per year from 163.15 billion gallons in 2000 to 189.34 billion gallons in 2010. Thus, alternative and replacement fuel use is assumed to increase from its estimated 2000 level of 4.39 billion gallons (0.29 mmbd) to 18.93 billion gallons (1.23 mmbd) in 2010. As a result of the consequent reduction in U.S. oil demand, world oil prices drop by approximately $0.68/bbl in 2010. The estimated cumulative savings from 2000 to 2010 is $35 billion.

Neither of these estimates takes into account the potential benefits of increased alternative fuel use in mitigating the impacts of possible future oil price shocks, or even reducing the probability of oil price shocks. The size of the potential benefits would depend not only on the size and frequency of future price shocks, but on how much the substitution of alternatives for petroleum increased the price elasticity of demand for oil. Methods for making such calculations have yet to be developed. As a result, the numbers presented above should be considered lower bounds, in the sense that they estimate only part of the full range of oil market benefits of greater use of alternative and replacement fuels. Likewise, no attempt is made here to estimate the costs of increasing use of substitutes for petroleum.

Mr. GRASSLEY. Mr. President, these draft reports produced by the U.S. Department of Energy's Office of Transportation Technologies will further expose inaccuracies of these contentions that renewable fuel standard will increase the cost of motor fuel.

As these reports conclude, the opposite is the truth. The first draft is entitled ''Oil Price Benefits of Increasing Replacement/Alternative Fuel Market Share.'' The second draft is entitled ''The Impacts of Alternative and Replacement Fuel Use on Oil Prices.'' Allow me to read excerpts for my colleagues.

The very first sentence of the first draft states:

Increasing the market share of alternative and replacement transportation fuels would have significant energy security and oil market benefits for the United States.

This Department of Energy analysis states further:

First, by reducing the quantity of petroleum consumed and imported, they reduce the vulnerability of the economy to oil price shocks.

The economic analysis continues with a second point. By increasing the price responsiveness of oil demand, they reduce the market power of the OPEC cartel, making it more difficult for OPEC to raise prices and to sustain these prices.

It is very obvious that should be our goal—that is our goal. Do we not want to reduce the market power of OPEC? Do we not want to make it more difficult for OPEC to raise prices? Is not the object of our energy legislation to reduce the quantity of petroleum consumed and imported and to reduce the vulnerability of the economy to oil price shocks, particularly those caused by OPEC withdrawal of oil from the market?

If the Senate approves these killer amendments that are offered by our New York and California colleagues, OPEC will win; America will lose.

When the Department of Energy did this analysis, the market share for alternative replacement fuels amounted to only 3.6 percent of our motor fuel supply. About 2.6 percent was MTBE, about .7 was ethanol, and the remaining .3 came from propane, compressed natural gas, electricity, and others. That mere 3.6 percent, according to the Department of Energy analysis, leveraged a reduction of the cost of oil by $1 per barrel.

The Department of Energy study concluded that by using a mere 3.6 percent, alternative fuels saved Americans $7 billion a year. The study also pointed out:

If the United States were to achieve the 10 percent replacement fuel goal of the Energy Policy Act of 1992, oil prices could be reduced by approximately $3 per barrel . . . (with) savings of approximately $20 billion on an annual basis.

The second draft offered more conservative estimates of consumer savings but nevertheless stated that current alternative motor fuel use reduced total U.S. petroleum costs by $1.3 billion per year, and if we increased usage to 10 percent by 2010, we would save $6 billion a year. Whether it is $20 billion a year or $6 billion a year, it is saving an awful lot of money for the consumers of America.

I appreciate the support of President Bush, as well as the Republican and Democrat leaderships in the Senate, in supporting and promoting renewable fuels. In addition to bipartisan unity, however, Congress needs to exhibit leadership that puts regional differences aside, for the sake of all Americans.

I will never understand why some people are more worried about the farmers and ethanol producers of the American Middle West than they are about oil and MTBE produced from the Middle East. I will never understand why people use MTBE-industry-generated misinformation about price spikes that, if taken to its logical conclusion, would argue that MTBE should not be banned, that drinking water contamination is no big deal in California or New York. It is very baffling to me.

I firmly believe the renewable fuel standard benefits all Americans, particularly including consumers in California. But even if California and New York do not get special treatment under this bill, would not my colleagues rather do something to benefit America's Midwest instead of doing things that continue to benefit the world's Middle East?

The opponents of ethanol suggest it costs too much or that it should be taxed at a higher level. That is their complaint. They think a gallon of gasohol should be taxed at around 18 cents a gallon instead of 13 cents a gallon. They want to raise taxes on the consumer who uses ethanol. For some reason, however, they choose to ignore the costs of the status quo: Our ever-increasing vulnerability on imported oil. They choose to ignore the real cost of imported oil.

Ten years ago, during debate on the Energy Policy Act of 1992, then-Energy Committee Chairman Senator Johnston of Louisiana reported that the United States was subsidizing imported oil to the tune of $200 per barrel.

Former Navy Secretary Lehman estimated the defense cost of protecting Middle East supply lines at around $40 billion a year, and we all know what the Persian Gulf war was about. It has been pointed out by numerous energy experts, including the ranking Republican of the Senate Energy Committee, that the Persian Gulf war was about oil.

So I hope my colleagues from California and New York will ponder on

this truth: Not one of our sons or daughters who have proudly donned the military uniforms of the United States has ever lost his or her life or limb. None of our children has ever shed their blood to protect ethanol supply lines and the production of ethanol.

What value might my colleagues place on that, that there has been no loss of life in this country and that there has been loss of life elsewhere protecting our oil lines? I will be in shock if we cannot all agree that reducing the risks to our sons and daughters, the risk of them losing life and limb trying to protect Middle East oil supply lines, is worth far more than the few cents a gallon that was mentioned, albeit incorrectly, as the increased cost of using renewable fuels.

My New York and California colleagues used the term ''mandate'' much during the debate. None of us likes mandates. I, for one, did not like mandating sending our sons and daughters to defend Middle East oil supply lines.

I heard one talk about market principles. What market principles are involved when supply must be protected by military escort to the tune of what Secretary Lehman said, $40 billion a year?

We also hear complaints about the highway trust fund, that it does not collect enough revenue because gasohol is not taxed highly enough. One has to wonder why my colleagues are not equally upset by the fact that billions of dollars from the highway trust fund are diverted away from highway construction and instead used for mass transit subsidies of California and New York. Before we increase taxes on motorists, I suggest it makes more sense to first put a stop to this transfer of wealth from highway users to subsidize cities' mass transit users. At the same time, I wonder if our colleagues have ever considered that mass transit subsidies are justified for the same reason as charging lower taxes on gasohol.

Are we not in both cases trying to reduce our dependence upon foreign oil imports? Why are subsidies to encourage mass transit ridership in New York and California OK, but subsidies to encourage all Americans to use gasohol somehow not okay?

Ten years have passed since we took up and enacted the Energy Policy Act of 1992. Given the fact that our dependence upon foreign imports has increased substantially, I think we can agree that the Energy Policy Act was a dismal failure. Part of the reason we failed was that we let regional bickering get in the way of pulling together a comprehensive energy plan that is good for every American.

We do not dare fail again, as we did in 1992, and that is why I urge my colleagues to defeat these anti-renewable-fuel-standard amendments that are before us.

Mr. FEINGOLD. Mr. President, I rise today to oppose the amendment offered by the Senator from New York, Mr. SCHUMER, to strike the ethanol mandate from the fuels title and to address comments that have been made in opposition to the fuels title contained in the Senate energy bill currently before us. I want to share my perspective on the fuels title as a Midwestern Senator who has had a cautious record on extending Federal subsidies for ethanol production. But I also come to the floor as a Senator who represents a State that is part of the only market for reformulated gasoline—or RFG—that sells entirely ethanol blends, the Chicago-Milwaukee market, and as a Senator who supports the Clean Air Act. We need to make certain that there are adequate supplies of ethanol so that when State bans on MTBE go into effect the short supplies of ethanol for Chicago and Milwaukee aren't stretched even further. It is appropriate that we ramp up that production over time, as the fuels title would do.

Despite the speculation by opponents of this title about policy reasons for using ethanol in reformulated gasoline, we use solely ethanol blended RFG in Wisconsin because of consumer preference due to public health concerns. Unlike other jurisdictions that continue today to use reformulated gas containing the additive methyl tertiary butyl ether, or MTBE, the citizens of the six non-attainment counties in Southeastern Wisconsin switched within the first month of the RFG program to ethanol blends.

This consumer demand was overwhelming. The EPA Regional Office in Chicago and my office received thousands of calls from individuals in Southeastern Wisconsin during the first week of February 1995, when the reformulated gasoline program was first implemented nationwide. Phone calls to my offices were coming in at rates of dozens per hour, and several hundred constituents contacted me to share their experiences. Most callers said that reformulated gasoline containing MTBE was making them ill.

The rest of the country now shares Wisconsin's concerns about MTBE's effect on health and the environment, and several States have acted to ban MTBE. These State bans on MTBE are having and will continue to have serious consequences for fuel markets, especially if the oxygenate requirements remain in place which they will unless this title passes. As ethanol is the second most used oxygenate, it is likely that it would be used to replace MTBE. But, quite simply, as even the proponents of this amendment acknowledge, there is not currently enough U.S. ethanol production capacity to meet the potential demand to replace the 3.8 billion gallons of MTBE used annually in reformulated fuel. The mandate in the energy bill seeks to create and guarantee a nationwide supply of ethanol to meet this new demand.

The fuel provisions in the energy bill require a uniform phase-down of the use of MTBE as an additive to produce reformulated gas, remove the oxygen content requirement for reformulated gas, and put in place a nationwide renewable fuels standard—or RFS—that will phase-in gradually over a number of years. These provisions provide for a more orderly and cost-effective solution to the MTBE issue than State-by-State action. Because individual States are banning or are considering banning the use of MTBE, without the action in this title, the existing Federal oxygenate requirement for RFG will increase the cost of complying with these bans and lead to an inefficient pattern of fuel-type by State.

In his floor statements, my colleague from New York, Senator SCHUMER, read at length the cost increases that ethanol RFG use would have on several States. My constituents are well aware of the 5-cent estimate of cost increase due to the use of reformulated fuel containing ethanol cited by the Senator from New York and have already paid for that increase and much more. And what has caused that price increase is, quite simply, limited supply.

Before the start of the second phase of the reformulated gas program in 2000, when the reformulated fuels were required to be cleaner, estimates of the increased cost to produce the blend stock for ethanol-blended RFG ranged from 2 to 4 cents per gallon, to as much as 5 to 8 cents per gallon. In summer 2000, RFG prices in Chicago and Milwaukee were considerably higher than RFG prices in other areas, ranging from 11 to 26 cents higher, in part due to the higher production cost of producing ethanol RFG just for this market. To decrease the potential for price spikes, on March 15, 2001, EPA changed its enforcement guidelines to allow for the blending of cleaner burning reformulated gasoline containing ethanol during the summer months. Nevertheless, we are continuing to see gas prices again increase in Wisconsin as the time for having summer reformulated fuels at the pump grows closer. We in Wisconsin see States that are banning MTBE as reaching for our small and limited supply of ethanol RFG. Congress must act to make certain that our supplies increase.

Despite all indications that the energy bill fuels title will produce sufficient ethanol supplies to meet the needs of a State's banning MTBE and will not increase prices, the bill includes additional safeguards. Prior to 2004, the Department of Energy is to conduct a study to determine whether the bill is likely to significantly harm consumers in 2004. If the Department determines this to be the case, then the Environmental Protection Agency must reduce the volume of the renewable fuels mandate for 2004. Also, upon petition of a State or by EPA's own determination, and in consultation with DOE and USDA, EPA may waive the renewable fuels standard, in whole or in part, if it determines the standard would severely harm the economy or environment of a State, a region, or

the United States, or if there is an inadequate domestic supply or distribution capacity to meet the requirement.

In addition to the ethanol mandate, there are other provisions in the fuels title that would improve fungibility of RFG nationwide, by standardizing volatile organic compound—or VOC—reduction requirements. In practice, when combined with the energy bill's renewable fuels mandate, this would enable the part of Wisconsin that uses Federal RFG to draw on supplies of Federal RFG from other areas, such as St. Louis and Detroit, if necessary. The ability to rely on other sources of RFG is especially important when sudden supply shortages arise due to unexpected events, such as refinery fires or pipeline breakdowns, which we in Wisconsin have also experienced. The fuels language in the energy bill would help address this problem by bringing other areas that use Federal RFG in line with Wisconsin's blend by standardizing VOC reduction requirements nationwide.

With State bans on the books and a continuation of the Federal RFG oxygen requirement, we face a serious ethanol shortfall. Consumers want and deserve affordable gasoline and clean air. We cannot let this bill go by and not do everything we can to achieve this goal. I urge my colleagues, even those who have concerns about ethanol, to think seriously about how we meet our obligations under the Clean Air Act without these provisions and to rethink efforts to strip this language from the bill.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the time until 6 p.m. today be divided with respect to Schumer amendment No. 3030 and that the time be divided as follows: Ten minutes each under the control of Senators SCHUMER and FEINSTEIN; 20 minutes under the control of Senator WELLSTONE; and 10 minutes under the control of Senator MURKOWSKI; that at 6 p.m. today, without further intervening action or debate, the Senate proceed to vote in relation to the amendment, with no intervening amendment in order prior to the vote.

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

Mr. MURKOWSKI. Madam President, I thank my good friend from Iowa for reminding Members we are talking about considerable expense to the taxpayer, providing a domestic source of energy that would ordinarily come from the technological advancements of looking for oil either offshore or on land. We already had a debate on ANWR; I will not go back into that.

However, I call my colleagues' attention to a couple of realities. I am sympathetic to the concerns raised by the Senators from California and New York. I don't like mandates of any kind. I find it ironic that the same Senators who voted for a renewable portfolio standard argue against a renewable fuel standard. This forces some $88 billion in higher costs to consumers and forces consumers in California and New York to pay 3 cents per kilowatt for electricity they are not going to use.

Again, I ask why they voted for the renewable portfolio standards. No new energy supply was created, no national security benefit. So although we do not like mandates, the renewable portfolio standards have increased our energy supply. As the Senator from Iowa said, it certainly enhances our national security.

If we are not going to have the courage to develop our domestic oil and gas reserves in an environmentally sound manner, the only option we have to extend our supply is to reduce dependence on imported oil in provisions such as ethanol. Again, mandates I find unacceptable, but they are a part of the price. We simply don't have to pay for our failure to develop domestic resources.

Consequently, I remain in opposition to the amendment of the Senators from New York and California. Different regions of the country have different points of view on energy, and alternative fuels are recognized in this body, but most Members thought any deal between the oil industry and the American farmers was doomed at one time. I think this proposal proves them wrong. I am basically opposed to gutting the amendment before the Senate.

One of the things I am particularly opposed to, after a discussion of gasoline prices, was the issue of whose figures are right. The Energy Information Agency supports using those figures, addressing some of the amendments that are before the Senate. The point is, where did the report come from? We asked for it. I asked the Energy Information Agency to study different provisions of the bill because the Senate committees were denied the chance to mark up the bill in committee, as we have discussed previously.

The Senate leadership and I have had strong and opposing words about the energy bill consideration. As for ethanol, on the other hand, I think we have collectively tried to do what is right for the country, as part of a comprehensive bill. What has driven all parties to this agreement is the price of gasoline.

We want fair prices for consumers. If States ban MTBE and don't use ethanol, the price of gasoline is certainly going do go up. That is not what the ethanol part of this bill does.

Senator DASCHLE and I wrote a letter asking the EIA for clarification on what their report said about the impact of ethanol in the MTBE provisions of the bill. I ask unanimous consent the letter dated April 12 from the Department of Energy be printed in the RECORD.

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

DEPARTMENT OF ENERGY,
Washington, DC, April 12, 2002.

Hon. FRANK H. MURKOWSKI,
Ranking Minority Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR MURKOWSKI: Enclosed is an analysis responding to your and Senator Daschle's April 10, 2002, request to analyze the provisions of Senate Bill 517 (The Energy Policy Act of 2002) requiring a four-year phase down of the use of methyl tertiary butyl ether (MTBE) and a ten-year ramp-up in the amount of renewable fuels included in gasoline. Per your request, we have provided results of: 1) a 14-State ban on the use of MTBE based on those States that have already banned the use of MTBE, 2) a Northeast State ban on MTBE in 2004 along with the 14-state ban which is the Reference Case of this study, 3) the provisions of S. 517 requiring an MTBE ban with State waivers including the provisions of the above two cases, and 4) no MTBE ban, but including the renewable fuel requirement. We implemented the State waiver provision in S. 517 according to your instructions of assuming the continual use of MTBE in gasoline at 13 percent for the remaining States. This results in an effective MTBE reduction of 87 percent. We did not implement the banking and trading provisions of the Bill because of the complex modeling required and your need for immediate results. We have found from our other analyses that banking results in meeting the required targets at a later date than without banking, and that trading lowers the cost of the provision because it allows for the least cost entities to meet the requirements first. Thus, the results below should be treated as an upper bound on the price impacts.

The results indicate:

That reformulated gasoline (RFG) prices are projected to increase in 2006 by about 4 cents per gallon because of a 14 State ban on MTBE, by an additional 2 cents per gallon if the remaining Northwest States ban MTBE (for a total of 6 cents per gallon), and by an additional 2 cents per gallon if S. 517 is passed and the assumed States exercise the waiver option (for a total of 8 cents per gallon);

The comparable numbers for average prices of all gasoline in 2006 are an increase of: about 2 cents per gallon for the 14-State Ban, an additional 0.5 cents per gallon when the remaining Northeast States ban MTBE (total of 2.5 to 3 cents per gallon), an additional 0.5 cents per gallon when the State waiver provisions of S. 517 are assumed (3 to 3.5 cents per gallon).

Assuming a Renewable Fuel Standard (FTS) without an MTBE ban has much less impact on prices. An RFS increases RFG prices by less than 1 cent per gallon and increases the average prices for all gasoline by less than 0.5 cent per gallon. This is the same finding that was in our original analysis.

If you have further questions, please contact me.

Sincerely,

MARY J. HUTZLER,
Acting Administrator,
Energy Information Administration.

Mr. MURKOWSKI. I refer to the last paragraph on the first page of that letter.

The results indicate:

That reformulated gasoline (RFG) prices are projected to increase in 2006 by about 4 cents per gallon because of a 14 State ban on MTBE, by an additional 2 cents per gallon if the remaining Northeast States bang MTBE (for a total of 6 cents per gallon), and by an additional 2 cents per gallon if S. 517 is passed and the assumed States exercise a waiver option (for total of 8 cents per gallon);

Assuming a Renewable Fuel Standard (RFS) without an MTBE ban has much less impact on prices.

That is a reasonable explanation relative to the alleged costs associated with ethanol that is really associated with the MTBE provisions.

Further, it is fair to say the farmers previously supported our opening of ANWR as part of the comprehensive bill. I thank them for that support, because the bottom line is reducing our dependence.

I make one point, however, since I have had a long history and some association with charts. As we recall in the ANWR debate, we had quite a discussion about footprints. Let me show one chart, the footprint associated with ethanol. The point is, there is no free ride on footprints. This happens to be a chart which shows the comparison. If you had 2,000 acres of grain corn in an ethanol farm, you would produce the energy equivalent to 25 barrels a day. If you had 2,000 acres of ANWR production, you would be producing a million barrels of oil a day.

As we look at the expansion of ethanol and its contribution to our national security in relieving us of the dependence on imported sources, it would take 80 million acres of farmland, or all of New Mexico and Connecticut, to produce as much energy as 2,000 acres of ANWR.

So, there is a comparison, whether we talk of popcorn or oil. Obviously, there is a footprint.

With that profound observation, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Senator from Alaska.

Let me start not with a disclaimer but just to be clear. My State of Minnesota is a leader in ethanol production. We have 14 ethanol plants, of which 12 are owned and operated by farmer co-ops. Last year, the total production from Minnesota ethanol was 200 million gallons, which was 95 percent of our State's ethanol needs.

After having said that, because this is so important to Minnesota, so important to farm country, so important to what we call greater Minnesota, I make some other arguments that go beyond Minnesota.

Expanded ethanol production promises to relieve us from some of our dependence on foreign energy supplies. With the current cost of home heating oil and gasoline going up, every American knows the value of achieving more energy independence. Ethanol is important to achieving energy independence.

Some of my colleagues say: Of course you are for ethanol, Paul, given you represent Minnesota. But I can make a lot of good public interest arguments for ethanol.

Second, expanded ethanol production provides a clean fuel which can be relatively pollution-free; that is certainly not the case with oil. As United States negotiators hammer out agreements—I hope—over global climate change, we are being constantly reminded of the long-term environmental costs of fossil fuel use.

We have, A, energy independence; and, B, a compelling environmental case. Also, because ethanol is oxygen-rich when added to gasoline, it burns cleaner, reducing the amount of harmful tailpipe emissions in the air. Fewer toxins, carcinogens enter your lungs. So better health is a third compelling public interest argument for ethanol. Finally, ethanol means rural development, bringing employment to a lot of the parts of our country where people are hurting the most. A recent study by Northwestern University concluded that nationwide, ethanol production boosts employment by 195,000 jobs, it improves America's balance of trade by $2 billion, and it adds $450 million to State tax receipts.

There are a lot of compelling arguments that can be made. In Minnesota, it creates jobs for Minnesotans. In fact, Minnesota has the Nation's most significant cooperative—I am really proud of that—ethanol industry owned by more than 7,000 Minnesota farm families.

I want to go back to the argument about energy independence, and I will make it in a different context. The whole war on terrorism has renewed interest, as it should, in reducing the energy imports and diversifying our energy sector. Oil imports today account for 56 percent of our oil consumption. The EIA estimates that our import dependency could grow to 70 percent by 2020—70 percent of our oil production imports by 2020. We spend more than $300 million a day for imported oil, with an annual cost of more than $100 billion imported oil.

Alarmingly, Iraq represents the fastest growing source of United States oil imports, exporting 700,000 barrels per day to the United States. We send Saddam Hussein more than $12 million per day—$4.3 billion annually—for his oil.

I do not know that I need to make any more of this case. I just don't see the point of subsidizing terrorism through the importation of oil from rogue nations. American agriculture, rural America, has part of the answer for energy independence. As to environmental benefits, I will make the point again. Ethanol continues to be an important tool for improving air quality in our Nation's cities. Ethanol reduces all the criteria of pollutants—carbon monoxide, hydrocarbons, NOx, toxics, and particulates—all of them. The benefits are going to continue. Studies show that ethanol reduces emissions of carbon monoxide and hydrocarbons by 20 percent and particulates in the air by 40 percent.

So there is a compelling case to make for Minnesota, a compelling case to make for our co-ops and family farmers. Value-added agriculture? You had better believe it. But a compelling case to make for the country: More energy independence, less dependence on Middle Eastern oil; in addition, much better for the environment; and some compelling public health reasons.

The final point is that this renewable fuel standard will cause price spikes. I don't get this. The EIA, which is the independent research arm of the Department of Energy, released a report last week on what would be the price impact of this RFS standard which is before us in the Senate. Their analysis says that requiring renewables would add about one-half cent per gallon to the price of gasoline—a half a cent. This is not renewable fuels organizations. I am talking about the EIA, U.S. Energy Information Administration, the independent research arm of the Department of Energy. That is what we get.

Finally, I have heard arguments that farmers do not benefit from this renewable fuel standard. That is simply wrong. If we use corn, soybeans, and other commodities grown on farms as the feedstock for renewable fuels such as ethanol and biodiesel, then farmers benefit, rural America benefits. The farmers who benefit in Minnesota are not monopolies. I am not talking about ADM. I am talking about farmer co-ops.

Companies owned by farmers are creating most of the new production in ethanol. I think Senator DAYTON made this point earlier. Today, 61 ethanol facilities produce more than 2.3 billion gallons of ethanol, and 26 percent of these facilities are farmer owned. Additionally, there are 14 ethanol facilities under construction, of which 11 are farmer owned.

So the only thing I can tell you is that this requirement of 5 billion gallons ethanol biodiesel, as you look to the future—I will say it right now. I do not want to offend anybody. I wish ADM did not have the control. Thank goodness it is actually less and less a percentage of locally owned market control, but they still have way too much. I am not in favor of oligopoly or monopoly. But there are a lot of farmer co-ops that are formed. This is very good for farm country, very good for family farmers, very good for economic development in our rural communities.

Frankly, it is win-win-win. It is a win for energy independence, it is a win for public health, it is a win for the environment, it is a win for family farmers, and it is a win for Minnesota, the last point being the most important.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

Mrs. FEINSTEIN. Madam President, I would like to sum up on behalf of the sponsors of this amendment. The amendment deletes this particular renewable fuel mandate from the bill.

This is a tripling of ethanol. It may be fine in the Midwest where all the facilities that produce ethanol are located, but for those of us on the west coast and those of us on the east coast, it is truly egregious.

One of the reasons it is egregious is that we don't have the infrastructure to really accept it. Another reason is that, for many of us, our gasoline is already reformulated and already meets clean air standards and therefore we are forced to use a specific product, ethanol, way in excess of what is necessary.

Sure, we want to be relieved from the MTBE oxygenate requirement. But to replace it with a renewable fuels requirement that mandates a tripling of this additive on States that do not need it imposes some very substantial detriments.

I would like to read from the letter from the Governor of California. I know there are a lot of people who are experts on California in this body, but I think the Governor's position also bears scrutiny. He points out that:

While the [California Energy Commission's] Fall 2001 survey indicated that there may be adequate ethanol production capacity in the Midwest to meet California demand, both the [California Energy Commission] and its independent experts concluded that the infrastructure necessary to deliver ethanol and distribute it within California is not in place. Specifically, they pointed out the following problems:

Lack of unit-train off-loading facilities for ethanol in California; lack of storage tanks at distribution terminals; inadequate rail and marine capacity for handling ethanol; inadequate facilities to transport ethanol from marine terminals to inland distribution points.

Furthermore, the two-year delay in the decision by the federal government on California's request for a waiver of the oxygenate requirement has delayed completion of the infrastructure changes necessary to make a successful transition to ethanol within our current timeframe.

It also goes on to point out that:

California's Air Resources Board reformulated fuel standards—so critical to California's air quality—make it nearly impossible to replace gasoline with supplies from other states. In 2004 and 2005, a more stringent federal reformulated fuel standard begins to phase in, which will make it easier to import cleaner burning gasoline from other states and maintain California's strict air quality standards.

The point is, we can do a lot of this without tripling of ethanol.

The letter goes on to point out California has:

Limited refining capacity—California refineries have been running at operating rates approaching 95 percent of their nameplate capacity which, in effect, means California's refineries are operating at maximum levels now. Without new capacity, California cannot replace the volume lost by replacing MTBE with ethanol. In 2005, the Longhorn pipeline and other pipeline projects will be completed, freeing up California fuel that is now being shipped to Arizona.

The point of this is that ethanol absorbs more gasoline. It needs more gasoline. MTBE needs less gasoline.

California's refining plants are at capacity. Therefore, it cannot refine enough gasoline to take the amount of ethanol that we are required to take under this bill. That is the rub. It is a kind of strict mandated formula all across the Nation.

I can't believe people think this is good public policy. I can't believe people think the lack of flexibility in this policy is good for all States. Every State is in a different position with respect to ethanol. Some can absorb it. Some can't. Some need it. Some don't.

It seems to me that the key is the clean air standards in the Clean Air Act. If you can meet those clean air standards in other ways, good policy would allow a State to have that capacity.

This, in essence, is a selfish public policy. It is selfish just for a specific area of the United States that produces it, that has the plants there, that has the producers there, and, therefore, has adequate supply and adequate infrastructure. That is why we will move to delete this from the bill. Obviously, we don't expect to win it, but we expect to make the case. And I believe we have.

After this amendment is considered, it will be my intent—if I need to wait, I will wait—to call up the 90-day waiver amendment, which Senator DASCHLE has offered, and also the amendment which would produce a 1-year delay in the mandate which Senator DASCHLE has said he is agreeable to, and see what happens with these two amendments.

By and large, as somebody who has been in public life for 30 years now, as a lifelong Californian, to be part of a body that places my State in this kind of jeopardy in terms of loss of revenues from the highway trust fund, which is probably the most vital Federal appropriations we have, from a State that produces much more in taxes than we get back in services from the Federal Government, and to create a loss in the highway trust fund, and in all probability a gas tax hike—the Senator from Iowa particularly criticized us using a study to show the gas tax.

The reason we don't agree with the Energy Information Office study is because the Energy Information Office study does not account for problems with infrastructure or market concentration as criteria in evaluating any impact that this would have on increased fuel prices.

I see the Senator from New York on the floor. I know he wishes to sum up as well.

Mr. SCHUMER. Madam President, I have 10 minutes. But we will finish ahead of time. Because not everyone used their time, I ask unanimous consent that the order be modified so that in addition to my 10 minutes, the Senator from South Dakota could have 5 minutes to speak.

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

Mr. JOHNSON. Madam President, I thank my colleague from New York for his gracious willingness to allow me to make a few remarks about this pending amendment.

I rise in opposition to the amendment on the renewable fuels standard.

The Senate energy bill contains a landmark renewable fuels standard that is an essential part of a sound national energy policy. The bill provides for an orderly phase-down of MTBE use, removal of the oxygen content requirement for reformulated gasoline—RFG—and the establishment of a nationwide renewable fuels standard—RFS—that will be phased in over the next decade. The standard has strong bipartisan support and is the result of long and comprehensive negotiations between farm groups, the American Petroleum Institute, and coastal and Midwestern States. It is the first time that a substantive agreement has been reached on an issue that will reduce our dependency on foreign oil and greatly improve the Nation's energy security.

I have spoken in the past about the benefits of renewable fuels. These home-grown fuels will improve our energy security and provide a direct benefit for the agricultural economy of South Dakota and other rural States. The new standard is largely based on legislation that I introduced with Senator CHUCK HAGEL. The leadership of Senators DASCHLE and BINGAMAN resulted in the consensus legislation on this issue.

The consensus package would ensure future growth for ethanol and biodiesel through the creation of a new, renewable fuels content standard in all motor fuel produced and used in the United States. Today, ethanol and biodiesel comprise less than 1 percent of all transportation fuel in the United States, 1.8 billion gallons is currently produced in the United States. The consensus package would require that 5 billions gallons of transportation fuel be comprised of renewable fuel by 2012—nearly a tripling of the current ethanol production.

I don't need to convince anyone in South Dakota and other rural States of the benefits of ethanol to the environment and the economies of rural communities. We have many plants in South Dakota and more are being planned. These farmer-owned ethanol plants in South Dakota, and in neighboring States, demonstrate the hard work and commitment being expended to serve a growing market for clean domestic fuels.

The new standard does not require that a single gallon of renewable fuel must be used in any particular State or region. Moreover, the language includes credit trading provisions that give refiners flexibility to meet the standard's requirements. In no way is this intended to penalize California, New York, or any other region in the country.

Much has been made on the Senate floor and in the press recently about the possibility of additional costs that could be incurred when the new standard is enacted into law. I understand the concerns raised by the Senators from California and New York. This is a major change in the makeup of our transportation fuel. However, the goal of the agreement that has been reached

on this title is to phase in the renewable fuels standard in a manner that is fair to every region of the country.

The ban on MTBE and the elimination the oxygenate standard are two changes that Californians, New Yorkers, and others have sought for years. The goal of this agreement is not to raise gas prices, but to diversify our energy infrastructure and increase the number of fuel options. This helps to increase our energy security, increase competition and reduce consumer costs of gasoline.

Moreover, little has been made about the source of information that has been cited to alarm Members or about its potential impacts about the consequences of failing to enact these provisions. Senators from New York and California have distributed charts and spoken on the floor, claiming that the renewable fuels standard will increase consumer costs by 4 to 10 cents per gallon. The source of this data is the MTBE consulting firm, Hart/IRI, which claims it based its cost estimates on data from the Energy Information Administration.

EIA has completed two analyses of the fuels provisions of S. 517. The first, completed in February on the original provisions of the bill, found that the MTBE ban could increase gasoline costs by 4 to 10 cents per gallon, while the renewable fuels standard could increase gasoline costs by 1 cent per gallon in reformulated gasoline—RFG—areas and a half cent per gallon overall. Hart/IRI lumped these costs together and attributed them solely to the use of renewable fuels, making that provision appear to be roughly 10 times more expensive than it is.

The second EIA analysis on the new compromise agreement found that, because 14 States already have banned MTBE, the incremental costs of the MTBE ban in S. 517 would be only 2 to 4 cents per gallon, while the cost of the renewable fuels provision would be less than a penny per gallon in RFG areas and less than a half cent per gallon overall. The analysis did not consider the positive economic effects of the banking and trading provisions of the bill, which the American Petroleum Institute has said will reduce the costs to less than one-third of a cent per gallon.

The difference between the Hart/IRI analysis and the EIA analysis is not surprising. Hart/IRI is an MTBE consultant whose business depends on the continued existence of the MTBE industry. Since the fuels compromise bans MTBE, Hart/IRI has every incentive to exaggerate and misrepresent the cost impacts of the legislation. It is unfortunate and ironic that some Members have misinterpreted the data from this analysis.

The renewable fuels standard in S. 517 addresses the difficulties that States have encountered in meeting Federal gasoline requirements, while promoting the use of home-grown fuels that will reduce our Nation's dependency on foreign oil. Any further attempts to reduce or eliminate the standard should be opposed so that we can move forward and improve our Nation's energy security.

The inclusion of the renewable fuels standard will result in cleaner air, more jobs across America, a better trade balance for the United States, less reliance on the politics of very troubled parts of the country, fewer gallons of oil imported from Saddam Hussein, and it will result in better prices for our farmers and overall be a major plus as our Nation moves in the direction of renewable fuels.

The PRESIDING OFFICER. Who yields time?

Mr. SCHUMER. Madam President, I believe I have 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. SCHUMER. Madam President, I will get into the substance of this amendment once again, but before I do, I alert my colleagues to one particular provision that is in the bill that is particularly odious, and that is a pretty strong accomplishment given how many pretty odious provisions there are in this bill. But this is the ethanol gas tax safe harbor provision. The chart I have shows what it says. It is adding insult to injury to make a deal with the petroleum industry, which has always opposed ethanol. They have given them a safe harbor so you cannot sue if an additive causes pollution of the ground water. So here we are.

And I beg to disagree with my colleague from South Dakota, and others. This bill abolishes MTBE. The Schumer amendment does not change that. So anyone who likes MTBE is not going to be for either the bill or my amendment.

The reason so many States have abolished MTBE—and this bill does—is that it pollutes, and all of a sudden we are giving the petroleum industry a total safe harbor exemption from being sued, even if they knowingly pollute. Can you imagine that?

Senator BOXER has an amendment to get rid of that, but we do not even know if she will be able to offer it. Therefore, if you do not like this safe harbor, the one sure way of making sure that this safe harbor is eliminated is to vote for the Schumer amendment, which not only gets rid of the ethanol mandate but also this particularly odious safe harbor.

I am utterly amazed that so many on my side, who believe in the right to sue, are going to vote to keep this particular safe harbor, all to subsidize ethanol.

I guess, in a certain sense, this is a regional fight.

I have looked at who has spoken out for the ethanol mandate and not a single person comes outside of this Middle West region. So if you think the decision is totally on the merits, just look at this chart: 98 percent of the ethanol comes from this particular region. No wonder the people from the Middle West want it. Although, I will tell you this. When Iowa and Nebraska legislators were given a chance to mandate MTBE in their States, they rejected it. They rejected it because they knew their drivers would pay more. Even in States with so many corn farmers, the legislators said no. The editorial opinion throughout the States was against it.

That is another thing that makes me incredulous about this amendment, that it is not done in the Middle West by its own States. Yet they are imposing it on everybody else.

In New York, I think we are the largest producer of cabbage in the country. Maybe we should mandate that the rest of the country buy our cabbage. California is probably the biggest producer of almonds in the country. Maybe we should say that you have to buy almonds in the other 49 States. By the way, if you do not want almonds, you like cashews, you are still going to have to buy an almond credit; so you will have to pay for it. Or maybe you like peaches, where South Carolina and Georgia and Pennsylvania lead. Maybe we should require the whole country to buy peaches.

This is utterly amazing, I say to my colleagues. One region of the country requires everybody else to buy ethanol.

Both my colleagues and friends from South Dakota and Minnesota argue this will not cost that much. If it will not cost that much, how come you have to mandate it? If this is so good, why do you require us to do it? If the market is going to work, and these other additives are more expensive, let it.

Well, we think something is rotten in Denmark.

I do not think the people here who are for this mandate believe it is going to be so inexpensive or they would not have done a mandate. Let me tell you, ethanol is going to be a more valued commodity the minute we ban MTBEs nationwide because it is the only other additive that is produced domestically.

We believe that in New York we can reformulate our gasoline without an oxygenate. We are not given the chance to do that, even though it would be cleaner, it would be environmentally preferred, and it would be cheaper. There would still be plenty of other places that it would be in their market interest to buy ethanol.

Also, my colleague from Oklahoma, Senator NICKLES, talked about the highway trust fund. That is decreased. It is very hard, my colleagues, to think of an amendment that has bad provision after bad provision after bad provision.

I guess another thing I call this amendment is the ''piling on provision.'' Not only do you mandate ethanol, not only do you provide a safe harbor for polluters, not only do you deplete the highway trust fund, but, to boot, you raise our gas prices 4, 5, 6, 7, 8 cents a gallon.

My colleagues say this study is an MTBE-based study. We are abolishing

MTBE. Anybody who wants MTBE is not going to be for this amendment.

My colleagues from Minnesota and South Dakota have brought up a straw horse. Yes, if it were MTBE or ethanol, I would guess ethanol would win. But there are other alternatives, and those other alternatives, in a classic way that a free market economy should not work but a planned, socialistic, fascistic economy would work are being mandated. We do not do that for virtually anything else.

Do we set clean air standards? Yes. My good friend from South Dakota said there is a mandate on CAFE standards. That is correct. But we do not say the only way you can meet the CAFE standards is that you have to use aluminum or you have to use plastic. We set a standard and then let the market meet that standard.

That is all we are asking: Set a clean air standard. Require us all to meet it. Get rid of polluting materials such as MTBE, but do not say the only road to salvation is ethanol, although I know many of my colleagues truly believe that.

We always get on the floor and debate about working families. To me, this amendment, simply put, is: Whose side are you on? Are you on the side of working families who struggle and raise their gas tax 5, 6, 7, 8, 9, 10 cents—that is during good times—and then during spikes raise their gas prices 25, 30, 40 cents? Are you on the side of working families or are you on the side of Archer Daniels Midland? Because this is not going to even help the farmers. It will trickle down a little bit, but first Archer Daniels Midland, and the other companies, take their vig. They decide how much the farmer gets.

I have listened and often supported my colleagues who say the middle man gets all the money out of agriculture. But all of a sudden, the one middle man who has 41 percent of the market, Archer Daniels Midland, is being exalted. I would feel a lot better if every nickel here had to go to the farmer. It still would not be a good bill, but at least it would take away one of the objections.

So this is a ''whose side are you on'' amendment? Are you on the side of working families or are you going to make the guy or the gal who makes $25,000 a year and has to drive their car 25 miles to work subsidize Archer Daniels Midland to a large extent, and farmers who make more money than them, by and large, to the rest of the extent? That is not fair. That is not cricket.

This amendment is really appalling. As I have said before, if any proposal should have a skull and crossbones on it—beware, voter; beware, Senator—it is this one.

I mentioned this before, but I want to mention it again because I have a feeling 2, 3 years from now my colleagues will be coming back to me and saying: You were right; I should have listened.

I have seen every so often terrible amendments pass. They usually pass quietly. This one is passing pretty quietly. The number of us getting up to oppose it is small, and it wouldn't have even been debated had I not offered the amendment. In 1982, I think it was, Garn-St Germain seemed sort of innocuous. There were about 25 Members of the House who said: You had better watch out. This is allowing banks to use free money. It passed. Five years later, everyone was trying to explain why the heck they voted for it.

In the early 1990s, catastrophic illness: There was a mandate to help the few who needed help, but it was imposed on everybody else—not too dissimilar to this, except the people who were helped with catastrophic illness were a lot more worthy than the people being helped here—mainly agribusiness. It passed. It seemed all right. It was not debated. Then we all rued the day.

Madam President, I ask unanimous consent, since I don't think there is anyone else who wishes to speak, for 2 additional minutes to conclude.

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

Mrs. FEINSTEIN. Will the Senator yield?

The PRESIDING OFFICER. Will the Senator from New York yield?

Mr. SCHUMER. I ask unanimous consent that I be given 5 additional minutes and then I will yield.

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. If the Senator from New Mexico wishes to speak, I won't ask for that.

Mr. BINGAMAN. Reserving the right to object, as I understand it, the Senator from California continues to retain 2 minutes of her own time and, in addition, the Senator from New York has asked for an additional 2 minutes of time. I ask my colleagues if that will be sufficient for them to conclude their remarks.

Mr. SCHUMER. That would be great. That is fine with the Senator from New York.

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

Mr. SCHUMER. Would the Senator from California like me to use my 2 minutes first?

Mrs. FEINSTEIN. I would like to put some documents in the RECORD that just came over from the House.

Mr. SCHUMER. Please.

Mrs. FEINSTEIN. These documents were just disclosed in a House hearing this afternoon. They were disclosed to the FTC. What they show are competitors in the ethanol industry sharing bidding information to rig bids. One memo describes bringing European ethanol and laundering it through the Caribbean to avoid the tariff. These are hearings that are now going on in the House. I cannot, in the 5 minutes I have had these documents, have an opportunity to really confirm to anybody what they do or what they don't do. There are a number of suggestive comments in them, such as one company saying to the other: We are prepared to stop bidding should the price drop below $1.38 a gallon.

Interestingly enough, this all concerns ethanol going into your State, Washington, Madam President, a few years ago.

Whether this shows price manipulation or not, I don't know. But because these documents have just been made public this afternoon in the House, I ask unanimous consent to print them in the RECORD.

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

WESTERN ETHANOL COMPANY LLC,
September 29, 2000.

To: HERBERT WOLF
From: DOUG VIND
Re: Sales Opportunity—Requires Immediate Attention/Response

Further to our telephone conversation of today, I am writing to inform you of the details of a sales opportunity for LAICA's anhydrous alcohol. In order to participate in this opportunity, I must hear back from you by no later than close of business on Tuesday October 2.

British Petroleum (''BP'') has scheduled an on-line reverse auction to be conducted via the internet next week. They are requesting pre-qualified ethanol suppliers to bid on supplying product into the Ohio and Washington State markets beginning November 2000 and running through January 2001. We are interested in bidding to supply a portion of the volume requested into Washington State. This Lot is broken into partial supply percentages of 10,25,50 and 100%. The total volume requested for Washington State is 9,600,000 gallons over the 3 month period.

I am specifically recommending that LAICA consider committing to this reverse auction the 38,000 HL it has scheduled to receive from Europe. I believe this feedstock will arrive Costa Rica sometime during the month of November and be available for delivery into the US in December.

The delivery of denatured ethanol of BP into Washington State can only be made by either Railcar or Barge. Direct deliveries of undenatured ethanol cannot be accepted. For this reason, WEC is prepared to source railcars of domestic ethanol in order to supplement the volume coming from LAICA. This would allow us to bid on up to 25% of the requested volume, for a total of 2,400,000 gallons. We are also in discussion with Man with regard to their participation for a small piece of this business.

I expect that the winning bid for the 25% volume will be somewhere in the upper $1.30's to low $1.40's. We are prepared to stop bidding should the price drop below $1.38 per gallon. As I mentioned above, the delivery mode into Washington State allows for only barge or railcar. In view of this, it will be necessary to first discharge and denature the imported ethanol. We then will schedule a barge to transport the denatured ethanol to BP's terminal in Seattle. I am in the process of verifying the barging, terminaling and denaturing costs but I have been given a range of $.03—$0.4 per gallon. I should have this information on Monday.

I believe that the BP ''Request for Quotation'' presents a very good sales opportunity for LAICA's anhydrous alcohol. However, in order to participate in the on-line auction, WEC needs to receive LAICA's commitment to supply the 38,000 HL. We must obtain LAICA's commitment to this program by no later than close of business next Tuesday.

For your guidance, I have enclosed a listing of the Lots to be included in the Reverse Auction. As you will notice, we will be required to participate in a ''Qualifying Round'' of bidding on Wednesday September 3. This will enable us to move on to the competitive bidding event scheduled for Friday September 5.

I greatly appreciate your presenting this proposal to your Board of Directors on Monday. I will be in my office and be prepared to answer any further questions regarding this matter.

Best regards,

DOUGLAS VIND.

REGENT INTERNATIONAL,
Brea, CA, November 20, 1995.

To: Dick Bok, ADM Ingredients
From: Dick Vind

Finally received a phone call from Tuite at 3:30 PM PDT USA. Jeff stated he had at last been successful in talking to the Kriete's and they have agreed to split the tender with us.

Jeff's only reservation was that Kriete insisted that Man be the purchaser of the tender. In order to avoid a ''show down'' or bidding contest, I agreed to this request.

Therefore, Man will be bidding on the 75,000 hl out of France at a price of 5.02. I would suggest that ADM underbid at a price of 4.85. This will serve as a safety net in the event Man's bid is rejected for any reason. As a reminder, bids are due in this Thursday, November 23.

With regards to the sharing, I made it explicitly clear to Jeff that we (ADM & Western) would be purchasing the product FOB Port-la-Nouvelle from Man on a totally transparent basis. We would then assume responsibility for our own shipping which presumably we would be able to coordinate jointly in the future.

I would suggest you contact Tuite tomorrow at your convenience to confirm and request a signed agreement between both parties in order to assure compliance with this accord.

Best regards,

DICK.

June 17, 1996.

To: Dick Bok
From: Dick Vind
Subject: EU Wine Alcohol Tender—Due date: June 24

This will confirm that Archer Daniels Midland will be bidding 5.9 ecu on Spanish tender (194–96) and somewhat less, (say 5.75) on Italian tender (195–96).

I assume you have discussed with Man, and that all is OK. Please call if this is not the case.

Hope all is well.

Best regards,

DICK.

REGENT INTERNATIONAL,
March 18, 1992.

To: Ed Harjehausen, Archer Daniels Midland Co.
From: Doug Vind

Per our previous discussion, I have prepared a price and cost comparison demonstrating the sensitivity of the proposed bid price options and the resulting ''out turned'' finished ethanol costs FOB Acajulta, El Salvador.

FOB COST CALCULATION

Bid Price (ECUs) Per Hectoliter	4.2	4.3	4.4
Bid Price ($ per gallon)	.2336	.2392	.2448
Fobbing	.1700	.1700	.1700
Ocean Freight (in)	.1350	.1350	.1350
Inland Truck Freight (in)	.0147	.0147	.0147
Raw Material Cost	.5533	.5589	.5645
Processing Costs	.3800	.3825	.3850
FOB Value Plant	.9333	.9414	.9495
Inland Truck Freight (out)	.0147	.0147	.0147
FOB Cost Port (Acajulta)	.9480	.9561	.9642

VALUE ADDED CALCULATION

Direct Costs	.3450	.3475	.3500
Divided by FOB Val. Plant	.9333	.9414	.9495
Value Added (percent)	36.9	36.9	36.9

Ed, as the previous example illustrates, a .1 ECU per hectoliter change in our bid price results in approximately a $.008 per gallon change in total FOB out turned value. For purposes of this analysis, I have targeted a value added percentage of 36.9%. This percentage should be adjusted to reflect our mutual comfort level in order not to jeopardize duty free qualifications. As one further observation, please note the difference between ''processing costs'' and ''direct costs''. This difference results from customs guidelines limiting only certain types of costs as ''direct'' and applicable to the Value Added calculation.

Recommendation: In reviewing the three lots being offered by the EC for this tender, I suggest we bid ''competitively'' on lot number 77 and submit lower priced bids on lots 75 and 76 as ''back up'' bids in the event other potential purchasers fail in their attempt to secure these two lots.

I recommend our bid price on lot number 77 should be 4.15 ECUs per hectoliter. I recommend our bid price on lots number 75 and 76 should be 4.10 ECUs per hectoliter each.

As you are aware, our bids must be formally submitted by Friday, March 20, 1992. It will, therefore, be necessary to communicate this pricing information to your office in London by our close of business on Thursday.

Please give me a call with your recommendation after you have reviewed this memo.

Regards.

ED & F MAN ALCOHOLS
London, England, May 13, 1993.

To: Dick Vind,
From: Jeffrey Tuite
Regent International, Brea
El Salvador

On Tuesday evening I talked to the Kriets and here is what was said.

They were still keen to make a bid on these tenders. I cautioned once more against this. I said that Man would be able to offer a compromise wherein Man offered 1 million gallons when their plant was up and running. This would come from these tenders and they would buy from Man and the alcohol would be supplied equally by Vind and Hogan. Ideally it would be swap deal with them returning the ethanol next time around. In return it was expected that they did not interfere with these tenders.

The Kriete response was that they were still very nervous about being outmaneuvered and that we would block any alcohol for them from the next round of June/July tenders. I said that this was not the case and that if they could persuade the Commission to call five lots next time we would support them.

In summary Kriete is prepared to stay away from these tenders if Man can guarantee that they will get 1.4 million gallons from these tenders on a straight sale basis. I said that 1 million gallons was more realistic. Tony Hogan is prepared to make a straight sale and feels that this commits him less to Krite and there is the point that Kriet may not get any alcohol to return for one reason or another. My recommendation to you is to make available a straight 500,000 gallons sale (preferrably 750,000!) without strings and I feel this will mend things.

Can I please have your agreement to do this. I already have Tony's agreement. Naturally Man will secure ADMs P Bond risk for this sale.

I talked to George Fitch in Brussels today who is suffering the usual frustration one gets in Brussels. He had little to add to your fax of yesterday.

I will call you latter when I get home.

Best Regards.

REGENT INTERNATIONAL,
Brea, CA, April 6, 1994.

To: Dick Bok
From: Richard Vind
Subject: CBI Tenders

MEMORANDUM

I appreciate your quick response. Given the politics in the EU, I agree we should prepare ''bids as usual''.

As mentioned in our conversation this AM, I will have price information for you on or before April 14.

My travel plans now are to go to Europe the week of April 18. Meetings in Brussels, probably 19/20.

I will not know my exact travel plans until probably April 12 so I will communicate my itinerary along with pricing information prior to April 14 to your office.

Best regards,

DICK.

WESTERN PETROLEUM IMPORTERS INC.,
July 13, 1998.

To: Jeff Tuite
From: Doug Vind

I had hoped to hear from you today regarding the situation that has developed in the Northwest. You can imagine my surprise and disappointment today to learn that the ''deal'' I have been discussing with you for the past several weeks involving the shipment out of Costa Rica and El Salvador had already been concluded last week. You can also imagine my embarrassment with my customer when I called them today to firm up the transaction only to learn that they had been offered product which I had been previously told was not available.

My current frustration with the recent sequence of events is matched only by the humiliation of relying on what was indicated as timely and accurate information, representing that information as fact, and having my credibility at risk when the ''facts'' changed.

As you are aware, I have been actively working with your office in seeking a vessel to accommodate the delivery of both parcels. Because the sale was to involve a direct contract between Man and the customer, I revealed the targeted value for the product to you for your concurrence, which you provided. Late last week I attempted to reach you several times to discuss this matter but did not receive the benefit of a return call. As it turns out, you had already concluded this transaction but elected not to inform me. A simple call would have saved me from looking foolish today.

At this point I need to reconfirm your commitment to providing the 900,000 gallons out of El Salvador in a joint shipment sometime on or after mid August. As I have already actively represented this volume as available for delivery, I would prefer to avoid a repeat of today's confusion in the event you have made other unilateral arrangements.

Additionally, I wish to discuss this entire situation with you in greater detail in order to try and understand exactly how things got off track. Please call me at your soonest opportunity.

NOVEMBER 13, 1995.

To: George Fitch
From: Dick Vind
Subject: DGVI ''Doublespeak''

Please review the enclosed articles from a recent [October 20, 1995] issue of Agra Europe Magazine.

This article seems to completely refute Alex's comments made to us at our meeting of last week. Although the lead paragraph is not easily readable because the fax machine ''ate'' it, what it says is that The Commission is increasing the amount of compulsory distillation for this coming year [1995–96] versus last year [1994–95] by 137,000 HL. Although small, it nonetheless is a definite increase, and shows that the total amount of alcohol to be distilled via compulsory distillation for the three primary countries of Italy, Spain and France for this coming year will be a total of 5,400,000 HL.

It must further noted that this year's total wine production for these three countries is estimated to be 131,900,000 HL versus last year's 130,927,000 HL. With compulsory distillation being 4% of the total, if you take the total EU wine production of 155,400,000, this means that a total of 6,216,000 HL will be available for EUstocks this coming year.

It is apparent that there will continue to be significant overproduction in the EU for years to come, in that the Commission's efforts to reduce production have failed.

On a related matter, I have reviewed your memo to the CBI group. Your suggestion on opening up future tenders to avoid the GATT limits are troubling unless we couple it with some type of end-use restriction. This is because, as you can also see from the second article, notwithstanding what Tuite said at the meeting, it appears that the Brazilians will be back into the market in a big way next year. Unless we place some type of restriction on end-use, they'll easily outbid us for the entire EU output.

What happened to our end-use language we discussed with Olsen last year?

I would appreciate your investigating these matters as soon as possible and giving me the benefit of your thoughts. Also, I want to report the results of my meeting with the SENPA folks.

DICK.

REGENT INTERNATIONAL,
Brea, CA, November 20, 1995.

To: Dick Bok, ADM Ingredients
From: Dick Vind

Finally received a phone call from Tuite at 3:30 PM PDT USA. Jeff stated he had at least been successful in talking to the Kriete's and they have agreed to split the tender with us.

Jeff's only reservation was that Kriete insisted that Man be the purchaser of the tender. In order to avoid; ''show down'' or bidding contest, I agreed to this request.

Therefore, Man will be bidding on the 75,000 hl out of France at a price of 5.02. I would suggest that ADM underbid at a price of 4.85. This will serve as a safety net in the event Man's bid is rejected for any reason. As a reminder, bids are due in this Thursday, November 23.

With regards to the sharing, I made it explicitly clear to Jeff that we (ADM & Western) would be purchasing the product FOB Port-la-Nouvelle from Man on a totally transparent basis. We would then assume responsibility for our own shipping which presumably we would be able to coordinate jointly in the future.

I would suggest you contact Tuite tomorrow at your convenience to confirm and request a signed agreement between both parties in order to assure compliance with this accord.

Best regards,

DICK.

Mrs. FEINSTEIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Senator from California for that useful addition and also for her great work on this issue.

I was concluding by saying: There will be a stampede to deny knowledge of this amendment, to deny knowledge of the consequences of this amendment, in a few short years. I wish we wouldn't have to do that. I urge my colleagues, if you want to subsidize ethanol—it is now subsidized already 53 cents a gallon; there is a tariff barrier so it can't be imported; no good in our society has gotten as much—do that. If you want to raise the subsidy a little more, do that, because then it is the General Treasury that is paying. But for God's sake, don't make the drivers of Massachusetts pay 9 cents more a gallon and the drivers of Rhode Island and Delaware pay 9 cents more a gallon and the drivers of Pennsylvania pay 6 cents more a gallon.

That is the most regressive tax we are going to pass this year. Somehow, because it is coated in ethanol, that tax seems to be OK. The very same people who would get up on the floor and oppose taxes on any basis or on a regressive basis are allowing this one to go through.

We will rue the day we support an ethanol mandate. I urge my colleagues to think twice before they vote and support our amendment which still allows the banning of MTBE, still keeps the clean air standard, gets rid of oxygenate, but lets each State decide the best route to clean the air and clean the water.

Mandates are no good for American families. Mandates are no good for our economy. This is an ethanol gas tax. I urge it to be defeated.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, how much time do I have?

The PRESIDING OFFICER. Three and a half minutes.

Mr. BINGAMAN. Whose time is that?

The PRESIDING OFFICER. The time is not allocated.

Mr. BINGAMAN. That is not time either for or in opposition?

The PRESIDING OFFICER. That is correct.

The Senator from Nevada.

Mr. REID. Madam President, that time was allocated to Senator WELLSTONE. He didn't use all that time. Senator WELLSTONE is not here. Unless the Senators from New York and California want to use the time, I will yield back his time and we will start the vote now.

I yield back the time of the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 3030. The clerk will call the roll.

The senior assistant bill clerk called the roll.

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

The PRESIDING OFFICER (Mr. DAYTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 78 Leg.]

YEAS—69

Baucus	DeWine	Lieberman
Bayh	Dodd	Lincoln
Bennett	Domenici	Lott
Biden	Dorgan	Lugar
Bingaman	Durbin	McConnell
Bond	Edwards	Mikulski
Breaux	Feingold	Miller
Brownback	Fitzgerald	Murkowski
Bunning	Frist	Murray
Burns	Graham	Nelson (FL)
Byrd	Grassley	Nelson (NE)
Campbell	Gregg	Reid
Cantwell	Hagel	Roberts
Carnahan	Harkin	Rockefeller
Carper	Hatch	Sarbanes
Chafee	Hutchinson	Smith (NH)
Cochran	Inhofe	Snowe
Collins	Jeffords	Stabenow
Conrad	Johnson	Stevens
Craig	Kerry	Thurmond
Crapo	Kohl	Torricelli
Daschle	Landrieu	Voinovich
Dayton	Levin	Wellstone

NAYS—30

Akaka	Gramm	Santorum
Allard	Hollings	Schumer
Allen	Hutchison	Sessions
Boxer	Inouye	Shelby
Cleland	Kennedy	Smith (OR)
Clinton	Kyl	Specter
Corzine	Leahy	Thomas
Ensign	McCain	Thompson
Enzi	Nickles	Warner
Feinstein	Reed	Wyden

NOT VOTING—1

Helms

The motion was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. CHAFEE. Mr. President, on rollcall vote No. 78 I voted ''nay.'' It was my intention to vote ''yea.'' I ask unanimous consent to change my vote. This will not affect the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

EXECUTIVE SESSION

NOMINATION OF JEFFREY R. HOWARD OF NEW HAMPSHIRE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to executive session to consider the following nomination: Calendar No. 773; that the Senate vote immediately on confirmation of the nomination; that upon the disposition of the nomination, the motion to reconsider be laid upon

the table, any statements be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate return to legislative session without intervening action or debate; and Senator GREGG be recognized prior to the vote for 1 minute and Senator SMITH of New Hampshire be recognized for 1 minute prior to the vote; and I ask further consent this vote time count postcloture.

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

Mr. REID. I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today, the Senate is voting on the 46th judicial nominee to be confirmed since last July when the Senate Judiciary Committee reorganized after the Senate majority changed. With today's vote on Jeffrey Howard to the Court of Appeals for the 1st Circuit, the Senate will confirm its 46th judicial nominee and its 9th judge to our Federal Courts of Appeals in the less than 10 months since I became chairman this past summer.

This is the 18th judge confirmed since the beginning of this session in late January. Under Democratic leadership, in less than 4 months the Senate has confirmed more judges than were confirmed in all 12 months of 1996 under Republican leadership. The Senate has confirmed more judges in the last 10 months than were confirmed in 4 out of 6 full years under Republican leadership. The number of judicial confirmations over these past 10 months—46—exceeds the number confirmed during all 12 months of 2000, 1999, 1997, and 1996.

Mr. Howard is the 9th Court of Appeals judge confirmed in the less than 10 months since the Judiciary Committee was permitted to reorganize last July. This is more circuit judges than were confirmed in all 12 months of 2000, 1999, 1997, and 1996, 4 of the 6 years of Republican control of the Senate during the Clinton administration. It is triple the number of circuit judges confirmed in 1993, when a Democratic Senate majority was working with a President of the same party and received some cooperation from the administration. It exceeds the number of Court of Appeals judges confirmed by a Republican Senate majority in the first 12 months of the Reagan administration and it equals the number of circuit judges confirmed in the first 12 months of the first Bush administration.

As our action today demonstrates, again, we are moving at a fast pace and confirming conservative nominees. Since the change in Senate majority, the Democratic majority has moved to confirm President Bush's nominees at a faster pace than the nominees of prior Presidents. The rate of confirmations in the past 10 months actually exceeds the rates of confirmation in the past three Presidencies. It took 15 months for the Senate to confirm 46 judicial nominees for the Clinton administration. The pace at the beginning of the Clinton administration amounted to 3.1 judges confirmed per month. In the first 15 months of the first George H.W. Bush administration, only 27 judges were confirmed. The pace at the beginning of the George H.W. Bush administration amounted to 1.8 judges confirmed per month. In President Reagan's first 15 months in office, 54 judges were confirmed. The pace at the beginning of the Reagan administration amounted to 3.6 judges confirmed per month. By comparison, in the less than 10 months since the shift to a Democratic majority in the Senate, President Bush's judicial nominees have been confirmed at a rate of 4.6 per month, a faster pace than for any of the last three Presidents.

During the preceding 6½ years in which a Republican majority most recently controlled the pace of judicial confirmations in the Senate, 248 judges were confirmed. Some like to talk about the 377 judges confirmed during the Clinton administration, but forget to mention that more than one-third were confirmed during the first 2 years of the Clinton administration while the Senate majority was Democratic and Senator BIDEN chaired the Judiciary Committee. The pace of confirmations under a Republican majority was markedly slower, especially in 1996, 1997, 1999, and 2000.

During the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year, a pace of consideration and confirmation that we have already exceeded under Democratic leadership in fewer than 10 months, in spite of all of the challenges facing Congress and the Nation during this period and all of the obstacles Republicans have placed in our path. We have confirmed 46 judicial nominees in less than 10 months. This is almost twice as many confirmations as George W. Bush's father had over a longer period, 27 nominees in 15 months, than the period we have been in control of the Senate.

Our Republican critics like to make arguments based on false rather than fair comparisons. They complain that we have not done 24 months of work in the less than 10 months we have been in the majority. That is an unfair complaint. A fair examination of the rate of confirmation shows, however, that Democrats are working harder and faster on judicial nominees, confirming judges at a faster pace than the rates of the past 20 years.

I ask myself how Republicans can justify seeking to hold the Democratic majority in the Senate to a different standard than the one they met themselves during the last 6½ years. There simply is no answer other than partisanship. This double standard is most apparent when Republicans refuse fairly to compare the progress we are making with the period in which they were in the Senate majority with a President of the other party. They do not want to talk about that because we have exceeded the number of judges they confirmed per year.

They would rather unfairly compare the work of the Senate on confirmations in the less than 10 months since the shift in majority to full, 2-year Congresses. I say that it is quite unfair to complain that we have not done 24 months of work on judicial vacancies in the less than 10 months since the Senate reorganized. These double standards asserted by the Republicans are wrong and unfair, but that does not seem to matter to Republicans intent on criticizing and belittling every achievement of the Senate under a Democratic majority.

Republicans have been imposing a double standard on circuit court vacancies as well. The Republican attack is based on the unfounded notion that the Senate has not kept up with attrition on the Courts of Appeals. Well, the Democratic majority in the Senate has more than kept up with attrition and we are seeking to close the vacancies gap on the Courts of Appeals that more than doubled under the Republican majority.

In less than 10 months since the change in majority and reorganization, the Senate has confirmed 9 judges to the Courts of Appeals and held hearings on two others, with another circuit judge hearing scheduled for this week. In contrast, the Republican-controlled majority averaged only seven confirmations to the Courts of Appeals per year. Seven. In the less than 10 months the Democrats have been in the majority, we have already exceeded the annual number of Court of Appeals judges confirmed by our predecessors. The Senate in the last 10 months has confirmed more Court of Appeals judges than were confirmed in 2000, 1999, or 1997, and nine more than the zero from 1996. In an entire session of the 105th Congress, the Republican majority did not confirm a single judge to fill vacancies on the Courts of Appeals. That year has greatly contributed to the doubling of vacancies on the Courts of Appeals during the time in which the Republican majority controlled the Senate.

The Republican majority assumed control of judicial confirmation in January 1995 and did not allow the Judiciary Committee to be reorganized after the shift in majority last summer until July 10, 2001. During the period in which the Republican majority controlled the Senate and in which they delayed reorganization, the period from January 1995 through July 2001, vacancies on the Courts of Appeals increased from 16 to 33, more than doubling.

When Members were finally assigned to the Judiciary Committee on July 10, we began with 33 Courts of Appeals vacancies. That is what I inherited. Since the shift in majority last summer, five additional vacancies have arisen on the

Courts of Appeals around the country. With this week's confirmation of Jeffrey Howard, we have reduced the number of circuit court vacancies to 29. Rather than the 38 vacancies that would exist if we were making no progress, as some have asserted, there now remain 29 vacancies. That is more than keeping up with the attrition on the Circuit Courts.

Since our Republican critics are so fond of using percentages, I will say that we will have filled almost a quarter—29 of 38, or 23.8 percent—of the vacancies on the Courts of Appeals in the last 10 months. In other words, by confirming four more nominees than the five required to keep up with the pace of attrition, we have not just matched the rate of attrition but surpassed it by 80 percent.

While the Republican Senate majority increased vacancies on the Courts of Appeals by over 100 percent, it has taken the Democratic majority less than 10-months to reverse that trend, keep up with extraordinary turnover and, in addition, reduce circuit court vacancies by more than 10 percent overall—from 33 down to 29, or 12.1 percent. This is progress. Rather than having the circuit vacancy numbers skyrocketing, as they did overall during the prior 6½ years—more than doubling from 16 to 33—the Democratic-led Senate has reversed that trend. The vacancy rate is moving in the right direction—down.

Despite claims to the contrary, under Democratic leadership, the Senate is confirming President Bush's Circuit Court nominees more quickly than the nominees of other Presidents were confirmed by Senates, even some with majorities from the President's own party. The number of confirmations to the Circuit Courts has exceeded those who were confirmed over 10 month time frames at the beginning of past administrations. With the confirmation of Jeffrey Howard, 9 Circuit Court nominees will have been confirmed in less than 10-months. This number greatly exceeds the number of Court of Appeals confirmations in the first 10 months of the Reagan administration (three), the first Bush administration (three), and the Clinton administration (two). This is three times, or 300 percent, the number of Court of Appeals nominees confirmed in the comparable 10-month periods of past administrations. With nine circuit judges confirmed in the less than 10 months since the Senate reorganized under Democratic leadership, we have greatly exceeded the number of circuit judges confirmed at the beginning of prior presidencies. Our achievements also compare quite favorably to the 46 Court of Appeals nominees confirmed by the Republican majority in the 76 months during which they most recently controlled the Senate. Their inaction led to the number of Courts of Appeals vacancies more than doubling. With a Democratic Senate majority, the number of circuit vacancies is going down.

Overall, in little less than 10 months, the Senate Judiciary Committee has held 16 hearings involving 55 judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. In contrast, one-sixth of President Clinton's judicial nominees—more than 50—never got a committee hearing and committee vote from the Republican majority, which perpetuated longstanding vacancies into this year. Vacancies continue to exist on the Courts of Appeals in part because a Republican majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's Court of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

Despite the newfound concern from across the aisle about the number of vacancies on the circuit courts, no nominations hearings were held while the Republicans controlled the Senate in the 107th Congress last year. No judges were confirmed during that time from among the many qualified circuit court nominees received by the Senate on January 3, 2001, or from among the nominations received by the Senate on May 9, 2001. Had the Republicans not delayed and obstructed progress on Courts of Appeals nominees during the Clinton administration, we would not now have so many vacancies. Had the Republicans even reversed course just this past year and proceeded on the circuit court nominees sent to the Senate in January, the number of circuit court vacancies today could be in the low twenties, given the pace of confirmation of circuit nominees since the shift in majority last summer.

The Democratic leadership acted promptly to address the number of circuit and district vacancies that had been allowed to grow when the Senate was in Republican control. The Judiciary Committee noticed the first hearing on judicial nominations within 10 minutes of the reorganization of the Senate and held that hearing on the day after the committee was assigned new members.

That initial hearing included a Court of Appeals nominee on whom the Republican majority had refused to hold a hearing the year before. We held unprecedented hearings for judicial nominees during the August recess. Those hearing included a Court of Appeals nominee who had been a Republican staff member of the Senate. We proceeded with a hearing the day after the first anthrax letter arrived at the Senate. That hearing included a Court of Appeals nominee. In less than 10 tumultuous months, the Senate Judiciary Committee has held 16 hearings involving 55 judicial nominations—including 11 circuit court nominees—and we are hoping to hold another hearing this week for half a dozen more nominees, including another Court of Appeals nominee. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. The Republican majority never held 16 judicial confirmation hearings in 12 months. We will hold our 17th judicial confirmation hearing this week.

The Senate Judiciary Committee is holding regular hearings on judicial nominees and giving nominees a vote in committee, in contrast to the practice of anonymous holds and other obstructionist tactics employed by some during the period of Republican control. The Democratic majority has reformed the process and practices used in the past to deny committee consideration of judicial nominees. We have moved away from the anonymous holds that so dominated the process from 1996 through 2000. We have made home State Senators' blue slips public for the first time.

I do not mean by my comments to appear critical of Senator HATCH. Many times during the 6½ years he chaired the Judiciary Committee, I observed that, were the matter left up to us, we would have made more progress on more judicial nominees. I thanked him during those years for his efforts. I know that he would have liked to have been able to do more and not have to leave so many vacancies and so many nominees without action.

I hope to continue to hold hearings and make progress on judicial nominees in order to further the administration of justice. In our efforts to address the number of vacancies on the circuit and district courts we inherited from the Republicans, the committee has focused on consensus nominees for all Senators. In order to respond to what Vice President CHENEY and Senator HATCH now call a vacancy crisis, the committee has focused on consensus nominees. This will help end the crisis caused by Republican delay and obstruction by confirming as many of the President's judicial nominees as quickly as possible.

Most Senators understand that the more controversial nominees require greater review. This process of careful review is part of our democratic process. It is a critical part of the checks and balances of our system of government that does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream of legal thought, and whose decisions would further divide our nation.

The committee continues to try to accommodate Senators from both sides of the aisle. The Court of Appeals nominees included at hearings so far this year have been at the request of Senators GRASSLEY, LOTT, SPECTER, ENZI, and SMITH of New Hampshire—five Republican Senators who each sought a prompt hearing on a Court of Appeals nominee who was not among those initially sent to the Senate in May 2001. Each of the previous 45 nominees confirmed by the Senate

has received the unanimous, bipartisan backing of the committee.

Mr. Howard was given a hearing by the Senate Judiciary Committee due to Senator BOB SMITH's efforts. The Senator from New Hampshire is not someone with whom I agree on all issues. Indeed, we have had our disagreements on judicial nominations. He has applied a litmus test over the years and voted against nominees he felt were not against abortion. He voted against at least 20 Clinton judicial nominees. Nonetheless, when Senator SMITH spoke to me about his support for Mr. Howard, I accommodated Senator SMITH's request that we proceed promptly with a hearing on him. Mr. Howard is being confirmed by the U.S. Senate today, because Senator SMITH worked to have this nomination considered favorably.

Some on the other side of the aisle have falsely charged that if a nominee has a record as a conservative Republican, he will not be considered by the committee. That is simply untrue. Take, for example, the nomination of Jeffrey Howard. Just 2 years ago, he campaigned for the Republican nomination for Governor of New Hampshire. He has been a prominent figure in Republican politics in New Hampshire for many years. He served as the New Hampshire Attorney General, the State Deputy Attorney General, and the Chief Counsel in the Consumer Protection Division. He also served as the U.S. Attorney for the District of New Hampshire and the Principal Associate Deputy Attorney General during the first Bush administration. Thus, it would be wrong to claim that we will not consider President George W. Bush's nominees with conservative credentials. We have done so repeatedly.

The committee voted unanimously to report Mr. Howard's nomination to the floor, even though a minority of the ABA committee found the nominee to be not qualified for appointment to the U.S. Court of Appeals for the First Circuit. No Senator is bound by the recommendations of the ABA, but we have always valued their contribution to the process and the willingness of the members of the ABA standing committee to volunteer their time, efforts and judgment to this important task. Based on the judgment of each individual Member about the qualifications of a particular nominee, the Judiciary Committee has reported out other Bush nominees who received mixed ABA peer review ratings and even some with negative recommendations. Mr. Howard is well-regarded by his home-State Senators. The next time Republican critics are bandying around charges that the Democratic majority has failed to consider conservative judicial nominees, I hope someone will ask those critics about Jeffrey Howard, as well as the many other conservative nominees we have proceeded to consider and confirm.

Mr. HATCH. Mr. President, I rise in support of the confirmation of Mr. Jeffrey Howard to the First Circuit Court of Appeals. Mr. Howard's record is impressive. He will make a valuable contribution to an already prestigious First Circuit Court of Appeals.

Mr. Howard graduated summa cum laude from Plymouth State College. While attending Georgetown University Law Center, he became Editor of that institution's American Criminal Law Review.

After law school, Mr. Howard began an illustrious period of service in the New Hampshire Attorney General's Office. There he quickly moved through the ranks to head that office's Consumer Protection and Antitrust Division. Upon successful completion of this assignment, he was promoted to Associate Attorney General in charge of the division of Legal Counsel. He eventually became Deputy Attorney General, in essence, the second in command in this office.

Mr. Howard was then nominated and confirmed as U.S. Attorney for the District of New Hampshire. During his tenure in that office, he became Principal Associate Deputy Attorney General at the Justice Department. Here his responsibilities included advising Attorney General Barr and supervising the Department of Justice's Executive Office for Asset Forfeiture.

Mr. Howard then returned to New Hampshire and was appointed that State's attorney general. He wrote and implemented one of the Nation's first effective comprehensive statewide interdisciplinary protocols to combat domestic violence.

Clearly, Mr. Howard is a leader in the areas of fighting for consumers that were the victims of fraud and the rights of abused women.

The people of New Hampshire can be proud of this nominee; Jeffrey Howard has been a servant of New Hampshire's people. President Bush has done right by the people of New Hampshire and of New England with this nomination. Mr. Howard is a good example of the kind of high-quality judicial nominees selected by President Bush.

Mr. President, I am proud to say that Jeffrey Howard has my support and I believe he will be an outstanding addition to the first circuit.

Mr. SMITH of New Hampshire. Mr. President, I rise in very strong support of the nomination of Jeffrey Howard to the First Circuit Court. I thank the distinguished chairman of the Judiciary Committee, Senator LEAHY, for bringing this nomination forward promptly, and also Senator HATCH, the ranking member. I spoke to Senator LEAHY a couple of weeks ago, and he promised he would bring this nomination forward, and he did. I am deeply appreciative because Jeff Howard is very qualified for this position and I look forward to him having a long and distinguished career on the First Circuit Court. I am proud to support the nomination. I urge my colleagues to do likewise.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join my colleague, Senator SMITH, in strongly endorsing the nomination of Jeff Howard. I hope my colleagues will vote for him for the First Circuit Court. Jeff Howard has been an extraordinary public servant in New Hampshire. He has served as attorney general, as U.S. attorney. He continues the long tradition of quality individuals who bring integrity, intelligence, and ability to the appeals court in Boston. We are very proud of the fact he will be serving down there upon an affirmative vote from this body.

I yield the floor.

The PRESIDING OFFICER. The question is, will the Senate advise and consent to the nomination of Jeffrey R. Howard to be United States Circuit Judge for the First Circuit.

On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 79 Ex.]

YEAS—99

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden

NOT VOTING—1

Helms

The nomination was confirmed.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

AMENDMENTS NOS. 3231, 3232, 3157, 3242, 3244, 3245, 3246, 3247, 3248, 3249, AND 3250

Mr. BINGAMAN. Mr. President, I ask unanimous consent that notwithstanding rule XXII, the pending amendment be set aside and that it be in

order for the Senate to consider en bloc the following amendments:

Amendments Nos. 3231, 3232, 3157, 3242, 3244, 3245, 3246, 3247, 3248, 3249, and 3250.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENTS NOS. 3157 AND 3231, AS MODIFIED

Mr. BINGAMAN. Mr. President, I further ask unanimous consent that amendments No. 3157 and amendment No. 3231 be modified with the changes at the desk.

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

The amendment (No. 3157), as modified, is as follows:

On page 574, between lines 11 and 12, insert the following:

SEC. 17 . REPORT ON RESEARCH ON HYDROGEN PRODUCTION AND USE.

Not later than 120 days after the date of enactment of this Act, the Secretary of Energy shall submit to Congress a report that identifies current or potential research projects at Department of Energy nuclear facilities relating to the production or use of hydrogen in fuel cell development or any other method or process enhancing alternative energy production technologies.

(The amendment (No. 3231), as modified, is printed in today's RECORD under ''Text of Amendments.'')

Mr. BYRD. Mr. President, I am a product of West Virginia. I was pulled from the hard scrabble mountains of Appalachia, and I burn with a passion to serve this nation. I remember my roots. I am proud of them as they have served me well throughout my career in Congress. I recall the words of the legendary President of the United Mine Workers of America, John L. Lewis:

When ye be an anvil,
lie ye very still;
When ye be a hammer,
strike with all thy will.

I believe that we should work diligently on legislation that is beneficial to the American people—on education reform, Campaign Finance Reform, border security, homeland defense, energy security, and a common sense climate change policy. But, surely, we should not allow the White House to hammer us, disregarding what we have introduced, debated, and passed in this Chamber on a number of important policy matters. We must let the democratic process work. It is an open process, and it is the process that the Founders established so long ago to make it possible to consider the people's business.

It was a little over a year ago that the Administration began a comprehensive review of climate change—their alternative approach to the Kyoto Protocol. I understand that any new Administration must examine and develop its own set of policies and ideas on these issues, but they should also understand that so must the Senate. In the absence of any Executive Branch action last year, the Members of the Senate on both sides of the aisle took the lead, putting forward new ideas and approaches to address this climate change challenge.

In June 2001, I introduced bipartisan climate change legislation with Senator STEVENS. Our bill received unanimous support in the Government Affairs Committee in July 2001, and Senators DASCHLE and BINGAMAN then included this bipartisan legislation along with other climate change provisions in the larger energy bill in December 2001. Our proposal is based on scientifically, technically, economically, and environmentally sound principles and would put into place a long-term, comprehensive, national climate change strategy. I believe that this is the right policy framework. The Byrd/Stevens legislation recognizes that what we truly need is to find new ways to begin to solve the climate change problem. Additionally, I believe that such innovation will be key to the long-term viability of coal as an energy resource.

The primary cause of global climate change is due to the increase in greenhouse gases in the atmosphere, especially CO_2 which results from the burning of fossil fuels. To deal with climate change during this century, the world must find better, more efficient, and cleaner ways to burn the very fossil fuels, including coal, that power virtually the entire economy. Addressing climate change is one of the greatest challenges facing the world in this century, and it will require the development of advanced energy technologies, ideas, and responses far beyond today's endeavors. Therefore, the U.S. must set in place a framework with a comprehensive strategy and structure to better address this global challenge.

The Byrd/Stevens legislation calls for the development of a national strategy to coordinate the Federal Government's response to climate change and to examine how the U.S. and other nations can stabilize greenhouse gas concentrations over the long term. The strategy is built upon a foundation of four key elements, including technology development, scientific research, climate adaptation research, and mitigation measures to deal with climate change in an economically and environmentally sound manner.

Byrd/Stevens recognizes that the large number of Federal agencies are engaged in climate change-related activities, often resulting in a hodgepodge of ad hoc approaches. Our legislation calls for the creation of a new, statutory office in the Executive Office of the President to serve as a focal point of accountability and to integrate the work of these Federal agencies while enhancing congressional oversight.

Byrd/Stevens also fills a critical technology gap with a long-term research and development program through the creation of a new office at the Department of Energy which will focus on the innovative technologies necessary to move beyond the current, incremental steps being taken to address climate change today and authorizes $4.75 billion over ten years for such programs. We must develop the critical, innovative energy technologies that will help reduce emissions, while simultaneously preserving a diversity of energy options to support our growing economy.

Additionally, Byrd/Stevens understands that enhancing international research and development efforts as well as opening markets and exporting a range of clean energy technologies globally will be key to addressing the long-term climate change challenge. Finally, while it is critical to put in place the framework to address this long-term, multifaceted issue, it should be noted that the Byrd/Stevens legislation does not purposely include a mandatory or regulatory regime for emission reductions.

Senator STEVENS and I want to work in a bipartisan way to thread this needle—to find a way to establish a balanced, long-term framework so that the U.S. can better address the climate change challenge in a more comprehensive way. Climate change policy is no more and no less than cumulatively addressing good economic, energy, environmental, transportation, agriculture, forestry, and other relevant policy measures. At no time, was it our intent to presuppose or dictate any specific policy outcomes to the Executive Branch or the public at large. Rather, the Byrd/Stevens legislation incorporated the views of many Members and was built upon the experiences from past Administration's efforts in order to create a stronger, more stable foundation that would span this and many Administrations to come.

In summary, I believe that, by working in a bipartisan way in the Senate, we have refined the Byrd/Stevens legislation without undermining its core principles. I hope to work with the White House and other Members of Congress in the energy conference on this and other energy-related provisions. I look forward to the eventual inclusion of Byrd/Stevens in a comprehensive energy plan that can ultimately pass the Congress and be signed by the President. Finally, I ask unanimous consent that my full statement before the Senate Government Affairs Committee on July 18, 2001, be printed in the RECORD.

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

REMARKS BY U.S. SENATOR ROBERT C. BYRD: ''MEETING THE CHALLENGE OF CLIMATE CHANGE''—TESTIMONY BEFORE THE SENATE GOVERNMENT AFFAIRS COMMITTEE, JULY 18, 2001

Mr. Chairman, Senator Thompson, Senator Stevens, and Members of the Committee:

I thank you very much for inviting me to speak on behalf of S. 1008, the Climate Change Strategy and Technology Innovation Act of 2001, and I appreciate your holding this hearing on legislation that I believe incorporates the interests of a wide range of Members.

I have spoken twice in recent months on the Senate floor about the issue of global climate change. My desire to discuss this important issue derives not only from my sense of personal concern but also from my optimistic belief that we can meet the climate

change challenge if we are willing to make a commitment to do so. It is my position that all nations, industrialized and developing countries alike, must begin to honestly address the multifaceted and very complex global climate change problem. At the same time, I believe that our nation is particularly well positioned, with the talent, the wisdom, and the drive, in leading efforts to address the problem that is before us.

For these reasons, I, along with Senator Stevens, introduced the legislation (S. 1008) that is under consideration today. The Byrd/Stevens climate change action plan recognizes the awesome problem posed by climate change, and it puts into place a comprehensive framework, as well as research and development effort to guide U.S. efforts into the future. This insidious diseases that have ravaged the earth. Our nation is a world leader in medical and telecommunications technologies, and we should also be a leader when it comes to revolutionizing our energy technologies. Such a commitment would be important for our economy, our energy security, and the global environment overall. But I must ask how long are we going to wait to develop these technologies. This is a huge opportunity for our nation, but our efforts will only be rewarded if can we make a concerted commitment and dedicate ourselves to the task ahead.

Make no mistake about it, global climate change is a reality. There are some who may have misinterpreted my stance on this issue based on Senate Resolution 98 of July 1997, which I co-authored with Senator HAGEL. That resolution, which was approved by a 95–0 vote, said that the Senate should not give its consent to any future binding international climate change treaty which failed to include two important provisions. That resolution simply stated that developing nations, especially those largest emitters, must also be included in any treaty and that such a treaty must not result in serious harm to the U.S. economy. I still believe that these two provisions are vitally important components of any future climate change treaty, but I do not believe that this resolution should be used as an excuse for the United States to abandon its shared responsibility to help find a solution to the global climate change dilemma.

At the same time, we should not back away from efforts to bring other nations along. The U.S. will never be successful in addressing climate change alone. This is a global problem that requires a global solution. It is critical that nations such as China, India, Mexico, Brazil, and other developing nations adopt a cleaner, more sustainable development path that promotes economic growth while also reducing their pollution and greenhouse gas emissions.

In the Senate's Fiscal Year 2001 Energy and Water appropriations bill, I inserted language that created an interagency task force to promote the deployment of U.S. clean energy technologies abroad. Such an initiative is complementary to the effort proposed in S. 1008. The Clean Energy Technology Exports Initiative is now underway and will help foreign nations deploy a range of clean energy technologies that have been developed in our laboratories. These technologies are hugely marketable. For example, if nations like China continue to depend on coal and other fossil fuels to grow their economies into the future, it is incumbent upon the U.S. to accelerate the development, demonstration, and deployment of clean coal and other clean energy technologies that will be critical to meeting all nations' energy needs while also providing for a cleaner environment.

I believe that S. 1008 maps a responsible and realistic course. That road may be bumpy—and I am sure that there will be disagreements along the way—but it is a journey that we must take.

We owe it to future generations. S. 1008, if adopted and signed by the President, will commit the U.S. to a serious undertaking, but one that should no longer be ignored. If we are to have any hope of solving one of the world's—one of humanity's—greatest challenges, we must begin now.

Mr. MCCAIN. Mr. President, first, I thank the many Senators for their involvement in these discussions on the very complex issue of climate change. I applaud their efforts to reach agreement on these titles.

It is not often that several Committees come together to discuss an issue that cuts across their respective jurisdictions. I think that the agreement that has been reached thus far represents major progress on the road toward addressing the problem of climate change. I, like other Members, have concerns that need further discussion. I think that a dialogue with the House and the Administration will be invaluable as we continue our efforts to finalize a domestic approach to the problem. Therefore, I look forward to working with the various Senators as we continue these discussions on the bill during the conference with the House.

In closing, I would like to note that I have concerns with the newly established Office of Climate Change Technology in Title X of the bill. I hope these concerns can be further addressed as we proceed on the bill. Additionally, I have issues with the loan guarantee provisions of Title XIII. I will speak further on these in a separate statement.

Mr. BINGAMAN. Mr. President, I further ask unanimous consent that the foregoing amendments be agreed to en bloc and the motions to reconsider be laid upon the table.

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

The amendments Nos. 3231, as modified, and 3157, as modified, were agreed to.

The amendments (Nos. 3232, 3242, 3244, 3245, 3246, 3247, 3248, 3249, and 3250) were agreed to, as follows:

AMENDMENT NO. 3232

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 3242

On page 177, line 20, insert after ''information'' the following: ''retrospectively to 1998,''

On page 177, line 25, strike ''consumed'' and insert ''blended''.

On page 187, line 2, strike ''commodities and''.

On page 188, line 20, strike ''distributors''.

On page 191, line 6, strike ''refiners'' and insert ''refineries''.

On page 191, line 17, strike ''distributes''.

On page 198, strike line 24 and all that follows through page 199, line 21.

On page 204, line 3, strike ''importer, or distributor'' and insert ''or importer''.

On page 205, line 5, strike ''(2) EFFECTIVE DATE.—This section'' and insert the following:

''(2) EXCEPTIONS.—This subsection shall not apply to ethers.

''(3) EFFECTIVE DATE.—This subsection''.

On page 222, line 23, strike ''(B)'' and insert ''(C)''.

On page 233, line 18, strike ''(k)'' and insert ''paragraph''.

AMENDMENT NO. 3244

On page 3, line 4, strike ''ELECTRICAL'' and insert ''ENERGY''.

On page 3, line 5, strike ''electrical'' and insert ''energy''.

On page 5, line 4, strike ''electrical'' and insert ''energy''.

On page 5, lines 12–13, strike ''standard established by a'' and insert ''applicable''.

On page 5, lines 13–14, strike ''standard described in'' and insert ''low emissions vehicle standards established under authority of''.

On page 6, line 5, strike ''electrical'' and insert ''energy''.

AMENDMENT NO. 3245

(Purpose: To clarify the definition of ''tribal lands'')

On page 101, strike line 24 and all that follows through page 102, line 2 and insert the following:

''(6) TRIBAL LANDS.—The term 'tribal lands' means any tribal trust lands, or other lands owned by an Indian tribe that are within such tribe's reservation.''.

AMENDMENT NO. 3246

(Purpose: To clarify the definition of ''Indian land'')

On page 93, lines 8 through 9, strike ''on the date of enactment of this section was'' and insert ''is''.

AMENDMENT NO. 3247

(Purpose: To preserve oil and gas resource data)

Add at the end of title VI the following:

''SEC. 612. PRESERVATION OF OIL AND GAS RESOURCE DATA.

''The Secretary of the Interior, through the United States Geological Survey, may enter into appropriate arrangements with State agencies that conduct geological survey activities to collect, archive, and provide public access to data and study results regarding oil and natural gas resources. The Secretary may accept private contributions of property and services for purposes of this section.''.

AMENDMENT NO. 3248

(Purpose: To facilitate resolution of conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana)

Add at the end of title VI the following:

''SEC 611. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

''The Secretary of the Interior shall undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana. Not later than 90 days from enactment of this Act, the Secretary shall report to Congress on her plan to resolve these conflicts.''

AMENDMENT NO. 3249

(Purpose: To facilitate timely action on oil and gas leases and applications for permits to drill and inspection and enforcement of oil and gas activities)

On page 126, strike line 2 and all that follows through line 14 and insert the following: ''the States; and

''(3) improve the collection, storage, and retrieval of information related to such leasing activities.

''(b) IMPROVED ENFORCEMENT.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

''(c) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2003 through 2006, in addition to amounts otherwise authorized to be appropriated for the purpose of carrying out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary of the Interior.

''(1) $40,000,000 for the purpose of carrying out paragraphs (1) through (3) of subsection (a); and

''(2) $20,000,000 for the purpose of carrying out subsection (b).''.

AMENDMENT NO. 3250

(Purpose: To clarify the application of section 927 to certain air conditioners)

On page 294, after line 18, insert the following and renumber the subsequent paragraph:

''(6) Air conditioners and heat pumps that—

''(A) are small duct,

''(B) are high velocity, and

''(C) have external static pressure several times that of conventional air conditioners or heat pumps—

shall not be subject to paragraphs (1) through (4), but shall be subject to standards prescribed by the Secretary in accordance with subsections (o) and (p). The Secretary shall prescribe such standards by January 1, 2004.''.

VITIATION OF ADOPTION OF AMENDMENT NO. 3061

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Senate vitiate the adoption of amendment No. 3061, adopted on March 21, and that the text of amendment No. 2917 stricken by amendment No. 3061 be reinstated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 3008, AS AMENDED, AND AMENDMENT NO. 3145, AS MODIFIED, TO AMENDMENT NO. 3008

Mr. BINGAMAN. Mr. President, I ask unanimous consent that notwithstanding rule XXII, the Senate now consider amendment No. 3008; that amendment No. 3145 to amendment No. 3008 be modified by the changes at the desk; that amendment No. 3145, as modified, be agreed to; that amendment No. 3008, as amended, be agreed to, and that the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 3145), as modified, was agreed to, as follows:

In lieu of the matter proposed to be added, insert the following:

SEC. 8 . FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

''SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—the head of each Federal agency shall ensure that in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than non-ethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in paragraphs (A) and (B) is available at a generally competitive price—

''(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel rather than nonbiodiesel-blended diesel fuel.

''(3) the provisions of this subsection shall not be considered at requirement of Federal law for the purposes of section 312.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles excluded from the definition of ''fleet'' by subparagraphs (A) through (H) of section 301 (9).''.

The amendment (No. 3008), as amended, was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from New Mexico mentioned that all these amendments have been cleared on the other side.

AMENDMENT NO. 3115, WITHDRAWN

Mrs. FEINSTEIN. Mr. President, I withdraw amendment No. 3115.

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

AMENDMENT NO. 3225 TO AMENDMENT NO. 2917

(Purpose: To modify the provision relating to the renewable content of motor vehicle fuel to eliminate the required volume of renewable fuel for calendar year 2004)

Mrs. FEINSTEIN. Mr. President, I call up, for the purposes of setting them aside, two amendments. The first one is amendment No. 3225, and I ask the clerk to report the amendment.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] proposes an amendment numbered 3225.

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

Mrs. FEINSTEIN. Mr. President, all this amendment would do is provide 1 additional year to prepare for the mandate. That would change one date, changing this mandate from 2004 to 2005. And I ask unanimous consent the amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is set aside.

AMENDMENT NO. 3170 TO AMENDMENT NO. 2917

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 3170, and I ask the clerk to report the amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] proposes an amendment numbered 3170.

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

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

The amendment is as follows:

(Purpose: To reduce the period of time in which the Administrator may act on a petition by 1 or more States to waive the renewable fuel content requirement)

Beginning on page 195, strike line 19 and all that follows through page 196, line 4, and insert the following:

''(B) PETITION FOR WAIVERS.—

''(i) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

''(ii) FAILURE TO ACT.—If the Administrator fails to approve or disapprove a petition within the period specified in clause (i), the petition shall be deemed to be approved.

Mrs. FEINSTEIN. Mr. President, this amendment would say that in an emergency, instead of having to wait 240 days for the EPA to respond, either to serious harm to the economy or an inadequate domestic supply or distribution capacity to meet the requirements of the mandate, the EPA would have 90 days to consider that.

I ask unanimous consent this amendment be set aside.

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

Mrs. FEINSTEIN. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3124 TO AMENDMENT NO. 2917

Mr. FITZGERALD. Mr. President, I ask unanimous consent to set aside the pending amendment to call up amendment No. 3124, which is at the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside, and the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. FITZGERALD], for himself, Mr. CORZINE, Mr. JEFFORDS, and Mr. CHAFEE, proposes an amendment numbered 3124.

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

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

The amendment is as follows:

(Purpose: To modify the definitions of biomass and renewable energy to exclude municipal solid waste)

On page 81, between lines 2 and 3, insert the following:

SEC. 2 . DEFINITIONS OF BIOMASS AND RENEWABLE ENERGY FOR THE PURPOSES OF THE FEDERAL PURCHASE REQUIREMENT AND THE FEDERAL RENEWABLE PORTFOLIO STANDARD.

(a) FEDERAL PURCHASE REQUIREMENT.—

(1) BIOMASS.—In section 263, the term ''biomass'' does not include municipal solid waste.

(2) RENEWABLE ENERGY.—Notwithstanding anything to the contrary in subsection (a)(2) of section 263, for purposes of that section, the term ''renewable energy'' does not include municipal solid waste.

(b) FEDERAL RENEWABLE PORTFOLIO STANDARD.—

(1) BIOMASS.—Notwithstanding anything to the contrary in subsection (l)(1) of section 606 of the Public Utility Regulatory Policies Act of 1978 (as added by section 265), for the purposes of that section, the term ''biomass'' does not include municipal solid waste.

(2) REWEWABLE ENERGY RESOURCE.—Notwithstanding anything to the contrary in subsection (l)(10) of section 606 of the Public Utility Regulatory Policies Act of 1978 (as added by section 265), for the purposes of that section, the term ''renewable energy resource'' does not include municipal solid waste.

Mr. FITZGERALD. Mr. President, I rise today to offer an amendment that excludes the incineration of municipal solid waste from the definitions of renewable energy and biomass in the energy bill's Federal purchase requirement and renewable portfolio standard. This amendment, which is cosponsored by Senators CORZINE, JEFFORDS, and CHAFEE, closes a loophole in the bill that would encourage the use of municipal solid waste incinerators that emit harmful pollutants into our air. Increased incineration will result in greater pollution which, in turn, will lead to greater health problems for all Americans.

The goal of the renewable portfolio standard and the Federal purchase requirement in the energy bill is to promote a cleaner environment and diversify our Nation's energy sources. My amendment to the Daschle substitute helps to achieve that goal by eliminating the incentive for environmentally hazardous municipal solid waste incinerators. Whatever your thoughts are on the ultimate merits of incineration as a tool of waste management, its inclusion in the energy bill as a clean and renewable energy source is hard to defend.

This amendment does not preclude communities that elect to generate electricity from incinerating their waste from doing so, but, rather, prevents them from receiving special treatment under Federal law. As many of you know, the renewable portfolio standard requires that utilities either produce a percentage of their power from renewable energy sources or that they purchase credits from another party for any shortfall.

Similarly, the Federal purchase requirement in the bill, which I championed during my tenure on the Energy and Natural Resources Committee, requires that a percentage of the power consumed by the Federal Government come from renewable energy sources. Under the existing language now in the Daschle substitute, as amended by Senators BINGAMAN and THOMAS, the incineration of waste would be considered alongside wind and solar as a clean and renewable energy source. I doubt that those in communities with waste incinerators would consider those incinerators as environmentally innocuous as solar and wind energy.

During my years in the Illinois General Assembly, in the Illinois State Senate, I was confronted by a similar scheme to promote incentives for waste incinerators. In 1987, prior to my arrival in the General Assembly, that body approved a tax incentive that encouraged the construction of waste incinerators to generate electricity.

This subsidy to the waste incineration industry, which amounted to nearly $360 million over 20 years, according to some estimates, led to a proliferation of planned incinerators in mostly poor communities surrounding the city of Chicago. In response to significant public health and environmental concerns raised by these and surrounding communities, I joined several colleagues in repealing this subsidy and preventing the actual construction of many of these incinerators in my home State. I would hope that my colleagues could benefit from the experience that Illinois gained from providing special incentives to waste incinerators.

As many of you already know, municipal solid waste consists of residential and commercial refuge or garbage and is the largest source of waste in industrialized countries. Municipal solid waste is often burned as an alternative to placing the waste in landfills. Municipal solid waste incinerators burn this waste and, in the process, can generate electricity. This process only produces a minimal amount of electricity, while the environmental costs are immense. The incineration of municipal solid waste releases numerous pollutants into the air, including acid gases, toxic heavy metals, dioxins, particulate matter, nitric oxide, hydrogen chloride, and furans, to name but a few. The EPA has found that municipal solid waste incinerators are the No. 1 source of dioxin emissions nationwide and are responsible for nearly 20 percent of the Nation's mercury emissions.

The release of pollutants from municipal solid waste incinerators can lead to a myriad of serious public health problems. The hazardous materials emitted by municipal solid waste incinerators are deposited in fields, streams, woodlands, and other places. Municipal solid waste pollutants are linked to cancer, respiratory ailments, and reproductive problems.

Some contend that incineration can be made clean by removing harmful materials from the waste prior to its incineration or by limiting emissions by using filters and other pollution-control equipment. But regardless of these or other steps taken by municipal solid waste incinerator operators, such as scrubbing technologies, to limit the pollution, incinerators are still not a clean source of energy.

Pollution control efforts are largely ineffective because they fail to contain 100 percent of these emissions. And even when most of the emissions are contained, the resulting ash left over from the incineration process must be disposed of as a hazardous waste. If this hazardous waste is not disposed of properly, the ash can also cause considerable health problems. When fly ash is released into the air, people breathe in the small particles which can then sit in their lungs and lead to a number of the ailments I have already mentioned.

My amendment clarifies that the definition of biomass in the energy bill should not be construed to provide any special incentives to businesses that incinerate municipal solid waste. Eliminating these types of waste from the definition of biomass is consistent with the definition of biomass provided in the tax portion of the energy bill. The tax portion of the energy bill specifically excludes municipal solid waste in its biomass definition. If we choose to include municipal solid waste incinerators in the definition of biomass, we will be advocating for the economic interest of waste incinerator operators at the expense of the health of the American people.

The amendment I am offering seeks to preserve the health of our citizens and to keep our environment clean. Excluding municipal solid waste from the definition of biomass and renewable energy is the environmentally responsible thing to do. It would seem incomprehensible to me to grant municipal solid waste incinerators a special incentive to increase the burning of municipal solid waste that would spoil the environment and put the public's health in jeopardy.

This is a commonsense amendment that separates municipal solid waste incinerators from the other clean and renewable energy sources already included in the Daschle substitute amendment. It is consistent with the tax provisions and the energy bill's overarching goal of providing clean energy and a safe environment for future generations.

I hope you will join me in voting for this amendment to protect our environment and the health of the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, the amendment proposes to eliminate municipal solid waste as a qualifying generator type for the purpose of the renewable portfolio standard. I rise to oppose the amendment.

Specifically, I am opposed to the renewable portfolio standard as a matter of policy because I think the cost to consumers is exorbitant, some $88 billion over the next 20 years. I also am opposed to the pending amendment because consumers are going to pay even more than that. By reducing the types of qualifying generators, that will increase the cost of renewable credits which will be passed on to consumers through, obviously, the only alternative, which is higher electric rates.

I encourage consideration of opposing the amendment.

The PRESIDING OFFICER. The Senator from New Mexico.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 3234 TO AMENDMENT NO. 2917

Ms. CANTWELL. Mr. President, I send to the desk amendment No. 3234.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. DAYTON, Mr. WELLSTONE, Mr. FEINGOLD, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS, proposes an amendment numbered 3234 to Amendment No. 2917.

Ms. CANTWELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. I would like to say a word about an amendment to the energy bill that I filed today and about a couple tax provisions on which I have been working. As my colleagues know well, I have long sought to promote hydrogen and fuel cells as clean, efficient energy technologies that also will enable an economy based on domestic renewable energy sources. There are a number of provisions in the energy bill that help move us in this direction. I am pleased that the bill includes the Hydrogen Future Act I introduced in the Senate to reauthorize DOE hydrogen energy programs. The energy tax provisions intended for the bill include strong tax credits for both stationary fuel cells and fuel cell vehicles, as well as for hydrogen and hydrogen fueling appliances.

However, I believe more Federal action is needed to accelerate the commercialization of fuel cell technologies and bring their benefits to our country. In particular, the Federal Government needs to take bolder action to bring about the introduction of fuel cell passenger vehicles and of a hydrogen refueling infrastructure. Thus my amendment would create a federal fuel cell vehicle pilot program. In this program the Department of Energy would work with other federal agencies to identify several Federal fleets that would be suitable for demonstrating fuel cell vehicles under a variety of real-world conditions. DOE would help install the necessary fueling infrastructure at those sites; this infrastructure could also be used for a stationary fuel cell at the same location and be made available to other fuel cell vehicles. DOE would purchase several hundred fuel cell vehicles, and DOE and the companies that make the vehicles would assist the federal fleets to operate and maintain these vehicles in normal service. Data would be collected both to improve the next generation of vehicles and to assist fleet operators in incorporating fuel cell cars, and there would be regular reporting to Congress. The amendment also requires at least a 50 percent cost share from non-federal sources, as in most DOE demonstration programs. The total authorization for the program over six years would be $350 million.

This amendment includes a second provision for a study of the potential of stationary fuel cells in federal buildings. Even before fuel cell vehicles are commercially available, fuel cells have a great potential for providing distributed, highly reliable power for buildings, as well as heat. This study would look at what should be done to incorporate fuel cells into new federal buildings, so that planning for the buildings from the first stages can optimize the use of fuel cells and so that appropriate incentives can be put in place to encourage Federal purchase of stationary fuel cells. Again the Federal Government can become a lead consumer to foster commercialization of fuel cells and to demonstrate their benefits.

We also need to build a hydrogen fueling infrastructure. I am working with the Finance Committee to make two important changes to the excellent alternative fuel provisions that are in their package, in order to make the provisions effective for hydrogen fuel. The first would extend the credit for installation of hydrogen fueling property through 2011. This would simply match the credit for the fuel cell vehicles themselves, and recognizes that it will be several years before commercial fuel cell vehicles are readily available and there is significant demand for hydrogen fuel. The second change would alter the definition of refueling property so that not only storage and dispensing of hydrogen but also production of hydrogen from natural gas and other alternative fuels would be included. This is necessary because unlike natural gas, for example, today you can't just pipe in the hydrogen to a fueling station. You need to make the hydrogen on-site, most likely be reforming natural gas. This amendment would clarify the definition to be sure that such equipment is covered.

Finally, on the tax provisions, I hope to extend the tax credit and the exemption from the excise tax for biodiesel. Biodiesel is a renewable product made from soy beans that can be mixed with diesel roughly like ethanol is mixed with gasoline. Its use would cut our use of diesel and thus our consumption of petroleum, and also cut associated emissions. The tax provisions include a three-year tax credit for biodiesel. While this credit could be very helpful to establishing a strong biodiesel industry, three years is not enough to ensure return on investment in a new biodiesel plant. Both the investors and the creditors need a longer planning horizon to be confident of a stable market for the biodiesel. Thus I hope we will be able to extend this important new incentive in order to maximize its effectiveness.

With these provisions, and many others in the bill and the tax package, I look forward to a bright, clean, domestic, renewable energy future.

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

Mr. REED. Mr. President, my colleague, Senator COLLINS, and I would like to engage in a colloquy regarding the Low-Income Home Energy Assistance Program, or LIHEAP.

The Northeast-Midwest Senate Coalition, which I chair with Senator COLLINS, is a bipartisan coalition of Senators from the Northeast, Midwest and Mid-Atlantic dedicated to improving the environmental quality and economic vitality of the region. The Low-Income Home Energy Assistance Program is a vital program to our region. LIHEAP provides home energy assistance to some of our Nation's most vulnerable citizens, including families with children, the elderly, and disabled individuals.

People in our region know that cold weather kills. Mr. President, the facts speak for themselves. According to the Centers for Disease Control, between 1979 and 1998, hypothermia claimed the lives of over 13,000 Americans, twice as many Americans than died due to excessive heat. Residential energy costs in the Northeast and Midwest are more expensive which means that families in the region spend a greater amount of their incomes on home heating. It also requires more energy to heat a home than to cool one. LIHEAP households in our region spend over twice as much to heat their homes in the winter than it costs to cool a home in the south in the summer. According to the Department of Health and Human Services, during the peak winter heating season, energy bills can frequently reach up to 30 percent of a low-income family's income, especially if they live in substandard housing.

This winter, the average temperature in Rhode Island was in the low-30s. Without heat, these temperatures are

life-threatening. In my State, sweaters and blankets are not enough to keep you warm. If heating assistance is not available, low-income families, senior citizens and disable individuals living on fixed incomes make drastic choices, they go without food, prescription drugs and other basic necessities in order to maintain heat in their homes. On average, it cost $1,200 to heat a home in Rhode Island last year. Low-income families cannot afford these costs. LIHEAP provides vital assistance to keep the heat on for these households.

In February, my home State of Rhode Island ran out of LIHEAP funding and had to close its program. I received phone calls from a number of senior citizens who were unable to heat their homes because they ran out of heating oil. To help low-income families address the runaway costs of home energy bills, we need greater funding for this program. This year, Senator COLLINS and I lead a bi-partisan letter supported by 37 Senators that requested $3 billion for the LIHEAP program in fiscal 2003. I will ask unanimous consent to print a copy of the letter in the RECORD, and I want to thank Senators HARKIN and SPECTER for their strong and consistent support of this program.

Senators HARKIN and SPECTER increased LIHEAP funding by $300 million in fiscal year 2002. Unfortunately this was not enough to help States address the unmet need. During the winter of 2000/2001, the Nation experienced extraordinarily and unprecedented levels in energy costs along with colder winter temperatures. Many low-income families and senior citizens are still trying to pay off from the energy debt they incurred last winter. While energy prices are lower this year, they are not low by historic standards and the prices for natural gas and home heating oil remain at significant costs for many Americans. The recession is also an increasing need for assistance.

There is something that President Bush can do immediately to help low-income households meet their energy needs. Congress appropriated $300 million in the FY2001 Supplemental Appropriations bill for emergency LIHEAP assistance. For incomprehensible reasons, the President has chosen not to release the emergency LIHEAP funding. And, the President's budget inexplicably requests $300 million less for this program in 2003. Leadership and action are urgently needed to help low-income working families and senior citizens, and I hope the President will take action to release the emergency funds.

Next year, the Health, Education and Labor and Pensions Committee will begin reauthorizing the LIHEAP program. I want to thank Senator KENNEDY for his support of this program. I look forward to working with him and my colleagues to improve the LIHEAP program and increase funding.

Ms. COLLINS. Mr. President, I would like to thank Senator REED for his comments. LIHEAP is a vital heating assistance program for low-income families with children, senior citizens and disabled individuals. My colleagues in the Northeast-Midwest Senate Coalition work tirelessly every year to increase funding for this program and to ensure that these resources get to those most in need.

There is a terrible reality some low-income households must face each winter, to heat or to eat. Imagine a hard working low-income family that cannot cover the costs of basic necessities in the winter having to ask: Do I heat my home or provide enough food for my children? Or, imagine being an elderly couple and living on a fixed income who has to decide: Do we pay the heating bill or do we buy medicine? In Maine, a majority of our low-income families use heating oil to stay warm. When there is no oil, there is no heat. LIHEAP is the program that keeps the heat on for these families.

My State of Maine had to lower this year's benefit by $100 in order to serve the 48,000 households that needed assistance. Over 60 percent of the recipient in my State are elderly living on a fixed income of only $10,000 a year. This year, 4,500 additional households applied for assistance. Many of these families needed help because they are unemployed and have exhausted unemployment benefits. While energy prices are lower this year, they are high for low-income Mainers. The average LIHEAP benefit of $338 per household pays for only a little more then one tank of fuel for these families. In Maine, the average annual cost to heat a home with oil is $1,200.

The LIHEAP program was enacted to respond to the higher fuel prices and severe winters in cold weather States. Its primary focus is to alleviate winter heating crises. Heating homes is expensive. According to the National Fuel Funds Network, at the end of the 2000/2001 winter heating season, at least 4.3 million low-income households were at risk of having their utility service cutoff because of an inability to pay their winter home energy bills. In the Northeast and Midwest, the cost to heat a home is more expensive than to cool a home in the south, and families have to spend a greater amount of their incomes on home heating. LIHEAP households in the Northeast and Midwest spend over $1,200 on residential energy. This is 14 percent of their household income in the Northeast and 18 percent in the Midwest. LIHEAP households spend over twice as much to heat their homes in the winter than it costs to cool a home in the south.

The current allocation formula acknowledges the important public health role this program serves in cold weather States. Since its enactment, Congress reaffirmed the commitment of this goal. The program has been reauthorized a number of times and Congress maintained its commitment to low-income families faced with high heating bills. It did this by ensuring that no State would receive less than it did when the program was enacted.

Low-income households will take drastic, and unsafe, measures to try to stay warm in winter when they are in jeopardy of losing heat. When home energy bills are unaffordable in winter, low-income households rely on alternative heating sources such as ovens or space heaters. The National Fire Protection Association reports that house fires show a sharp increase in the cold-weather months. Half of the home heating fires and three-fourths of the home heating fires deaths occurred in the months of December, January, and February. Not being able to afford utilities place low-income households at increased risk to house fires and illness or death.

We need to increase funding for this vital program. Thirty-seven of my colleagues joined Senator REED and I in seeking increased appropriations for this program for fiscal year 2003. I look forward to working with Chairman KENNEDY and Ranking Member GREGG on the HELP Committee on reauthorization of this important program.

Mr. REED. Mr. President, I ask unanimous consent the letter to which I referred be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 2, 2002.

Hon. TOM HARKIN, *Chairman*
Hon. ARLEN SPECTER, *Ranking Member*
Subcommittee on Labor, Health and Human Services, and Education Appropriations, Senate Committee on Appropriations, Washington, DC.

DEAR CHAIRMAN HARKIN AND RANKING MEMBER SPECTER: We are writing to express our strong support for the Low Income Home Energy Assistance Program (LIHEAP). We appreciate your consistent support for this critical program to help low-income families and senior citizens address high energy burdens. We recognize the difficult choices that you face this fiscal year, however, we believe that the strong and continued growth in households requesting LIHEAP assistance demonstrates that the funding needed for this program has never been greater. We respectfully request that you consider appropriating $3 billion in regular LIHEAP funds for FY2003 and provide advanced appropriations for FY2004.

LIHEAP is a vital safety net for our nation's low-income households. For many low-income families, disabled individuals and senior citizens living on fixed incomes, home energy costs are unaffordable. Without LIHEAP assistance, low-income families and senior citizens face the impossible choice between paying their home energy bills or affording other basic necessities such as prescription drugs, housing and food. In FY2001, states received $2.25 billion in regular and contingency LIHEAP funding. Despite this historic level of funding, it is estimated that states were only able to serve 17 percent of the 29 million eligible households. Currently, states only have $1.7 billion available in LIHEAP funds for FY2002. Sixteen states estimate that they will be out of funding by the end of March.

We also request advanced appropriations for the program for FY2004. Advance funding allows states to plan more efficiently, and therefore, more economically. State LIHEAP

directors begin planning in spring and early summer for the upcoming year. Without advanced funding, state directors are unable to plan program outreach or leverage resources as effectively. Advanced funding will also ensure that states have the necessary funding to open their programs at the beginning of the fiscal year in order to provide timely assistance to low-income families who cannot afford to wait.

We look forward to working with you to secure the necessary LIHEAP funding to meet the needs of millions of low-income families. Thank you for your consideration of our request.

Sincerely,

Jack Reed, Susan M. Collins, Olympia Snowe, Carl Levin, Joseph Biden, Paul D. Wellstone, Debbie Stabenow, Joseph Lieberman, Paul Sarbanes, Charles Schumer, George V. Voinovich, Dick Lugar, James M. Jeffords, Bob Smith, Mark Dayton, Hillary Rodham Clinton, John F. Kerry, Lincoln Chafee, Patrick Leahy, Herb Kohl, Barbara A. Mikulski, Edward Kennedy, Max Baucus, Kent Conrad, Jay Rockefeller, Dick Durbin, Robert Torricelli, Conrad Burns, Christopher Dodd, Mike DeWine, Patty Murray, Gordon Smith, Blanche Lincoln, Byron L. Dorgan, Jeff Bingaman, Ron Wyden, Jean Carnahan, Maria Cantwell, Jon S. Corzine,

ETHANOL AND THE HIGHWAY TRUST FUND

Mr. BAUCUS. Mr. President, ensuring necessary and affordable energy supplies, including ethanol-blended motor fuels and other initiatives, is important to the quality of life and economic prosperity of all Americans. Policies to achieve these objectives, however, should not come at the expense of transportation infrastructure improvements.

By directing 2.5 cents from the sale of gasohol to the highway trust fund, we can begin to alleviate a growing problem for many States—lower highway trust fund contributions and therefore lower highway apportionments.

Furthermore, a major goal of TEA–21 was to restore the integrity of the highway trust fund by depositing all motor fuel taxes in the trust fund and then spending that money on highway, and some transit, programs. Gasohol's 2.5 cents is the only user tax on vehicle fuel that does not flow into the highway trust fund . I am proud to have it as part of the energy tax package.

I would especially like to thank Senators HARKIN, WARNER, and the ranking member of the Finance Committee, Senator GRASSLEY for their help in getting the 2.5 cent provision in the energy tax package. But the 2.5 cents is just the beginning.

I had planned to introduce an amendment, along with Senators HARKIN and WARNER, that would truly make the highway trust fund ''whole.'' This amendment would keep the ethanol subsidy, but make sure that it is the Treasury's General Fund that subsidizes ethanol—not the highway trust fund.

The ethanol subsidy is good energy policy, good agriculture policy and good tax policy. Yet, ironically, it is the highway trust fund that bears the burden of the subsidy. Since it is good general policy, I believe that the general fund should bear the burden of the subsidy.

I have been asked by several Senators not to offer an amendment at this time. I have complied with the requests of my colleagues. However, I am fully committed to recouping the 5.3 cents for the highway trust fund at the next possible opportunity.

I would like to thank Senators WARNER and HARKIN for working so closely with me on this matter. I look forward to continuing that work as soon as possible.

I am pleased to see progress being made to include the highway trust fund in our collective thoughts as we discuss energy policy.

Mr. HARKIN. Mr. President, I congratulate the chairman of the Finance Committee, Senator BAUCUS, for his strong leadership in working to secure the integrity of the highway trust fund and promote the use of ethanol and other renewable fuels like biodiesel. I also commend the hard work of Senator WARNER to preserve the trust fund.

There is no question that a strong highway system is vitally important to the efficiency of our economy. Poor roads mean higher costs to move goods, raising prices to consumers and making us less competitive in a world marketplace. It also means inconvenience to our citizens. The use of fuels containing ethanol or soy is both extremely important to the economy of rural America and good for the environment. The Federal Government wisely promotes ethanol as a fuel through the Tax Code and in other ways. But, on the negative side, against the logic of our country's need, current law provides that increased use of ethanol in fuel means a reduction in the highway trust fund and fewer dollars being spent to repair and improve our roads and bridges. I would note that mass transit currently is not adversely impacted under the law.

I was very pleased to be an original cosponsor of S. 1306, Highway Trust Fund Recovery Act, which provides for the shifting of the excise taxes on alcohol fuels from the general fund to the highway trust fund starting on October 1, 2003. I am very pleased that the measure has been included in the package of tax measures that the Finance Committee proposed to be added to the energy bill along with the very important legislation on biodiesel.

Enacting the Highway Trust Fund Recovery Act is the first step. The next step is to provide that the highway trust fund be made truly whole for the 5.3 cents not collected for gasohol. We have agreed to not offer a proposal to accomplish that goal during the floor debate of this measure. However, it is my intention to work with Senator BAUCUS, Senator WARNER and others to try to accomplish the goal of passing legislation to fully reimburse the highway trust fund from the general fund as soon as possible.

Mr. INHOFE. I commend the Senators from Montana and Iowa for their vigorous support of the highway trust fund. Because of their efforts, the measure pending before us, the trust fund, will recoup an additional 2.5 cents per gallon of ethanol currently being deposited into general revenue.

The Senator from Montana has also been very aggressive at trying to make the trust fund whole with respect to the current 5.3-cent per gallon ethanol subsidy. Although he and I do not agree on how to best address this issue, we are in agreement that the highway trust fund should not pay to subsidize any fuel source. Our surface transportation infrastructure needs are such that we cannot afford to forego any revenue source.

Certainly one of the key factors in the economic engine that drives our economy is a safe, efficient transportation system. If our economic recovery is going to continue to expand we cannot ignore the immediate and critical infrastructure needs of highways, bridges, and State and local roadways systems.

I believe this issue is best resolved through the reauthorization of the surface transportation program next year. Furthermore, it is my hope that the final result will be one that can be embraced by all sides in this debate.

Thus, I will be pulling together a working group of the highway community, the renewable fuels community, the refiners and the agricultural community to begin discussions on how we can make the highway trust fund whole. I ask unanimous consent that a letter from the Renewable Fuels Association be printed in the RECORD.

(See Exhibit 1.)

Again, I thank my colleagues from Montana and Iowa for their leadership on this issue and look forward to working with them to devise a permanent solution to this drain on the highway trust fund.

Mr. JEFFORDS. I applaud Senator BAUCUS for his efforts to enhance the flow of revenues into the highway trust fund. In particular, his suggestion that the time has come to redirect the 2.5 cents in ethanol tax that is now going into the general fund back to the highway trust fund is both timely and constructive.

As we reauthorize the surface transportation program over the coming months, I look forward to working with Senator BAUCUS and others on the broader issue of the Nation's shifting fuel mix and the implications of that trend on the highway trust fund.

Mr. SMITH of New Hampshire. As the Senators know, the compromise fuels package in the Daschle energy bill, which includes my language to ban MTBE and clean up the contamination caused by this gas additive, will also dramatically increase the use of ethanol. This compromise came after lengthy negotiations with several members of the Senate. We all worked in good faith to reach this agreement.

However, the increase in ethanol use will, over time, have a negative impact on the highway trust fund due to the ethanol subsidy which exempts ethanol from a good portion of the gasoline tax that pays into the trust fund. This is a concern that virtually all members of the Environment & Public Works Committee share, and it is problem that we will have to address. I believe that reauthorization of TEA–21 is the proper place to fix the trust fund problems caused by the increased ethanol use.

Between now and the time we introduce TEA–21 reauthorization, I would encourage all parties to work together, in a similar fashion to the way we reached the fuels compromise, in order to reach a consensus on the ethanol tax subsidy. If we work together in good faith, I have little doubt we will find a solution that can be included in reauthorization. I look forward to working my colleagues in that process.

Mr. DASCHLE. Our Nation's vulnerability to foreign energy production has been brought into bold relief by the continuing turmoil in the Middle East. It is imperative that our Nation take greater strides to promote the use of domestic, renewable fuels as a means of reducing our dangerous dependence on imported oil and strengthening U.S. energy security.

An aggressive program to produce and use more renewable fuel should be one of the pillars of our Nation's energy policy. And, as America uses more renewable fuel, we need to make sure that the financial soundness of the highway trust fund is not inadvertently undermined. That is why I strongly support Chairman BAUCUS' efforts to ensure that future use of ethanol will have no impact on the trust fund. I applaud his efforts in this regard and pledge to do whatever I can to see that we hold the highway trust fund harmless as we seek to make America more energy independent.

Mr. WARNER. Mr. President, I rise to support the efforts of Chairman BAUCUS and Ranking Member GRASSLEY to ensure that the tax package from the Finance Committee begins to reform our tax policies to provide equitable treatment for the highway trust fund, the only source of Federal revenues to improve our Nation's transportation infrastructure.

The Finance Committee's package ensures that revenue from the 2.5-cent excise tax on the sale of gasohol will be transferred to the highway trust fund.

It has been my privilege to work closely with Senator BAUCUS as a senior member of the Committee on Environment and Public Works during the development of the Transportation Equity Act for the 21st Century, TEA–21. He has always been a steadfast partner on surface transportation issues, and once again, he is providing the necessary leadership to protect the solvency and purpose of the highway trust fund. All vehicles, regardless of whether they use gasoline or gasohol, cause the same damage to our roads. The highway trust fund is the only means to finance highway maintenance and expansion activities, and without the Highway Trust Fund Recovery Act our States would receive less funding to improve our roads.

Depositing the 2.5 cents into the highway trust fund, however, is an important first step, but only part of the solution. I have been working with Senator BAUCUS and others to offer an amendment to provide for the full transfer of 5.3 cents to the highway trust fund, but we have decided to reserve this issue for another time. I remain fully committed to restoring the integrity of the highway trust fund by recovering the entire 5.3 cent per gallon subsidy that gasohol currently receives.

The bill before the Senate also contains other provisions which will contribute to further reductions in revenues to the highway trust fund. Depending on the final disposition of the renewable fuels provisions, revenues to the highway trust fund could significantly decrease as the renewable fuels mandate increases. I look forward to working with Chairman BAUCUS, Ranking Member GRASSLEY, and the leadership of both parties to fully restore revenues to the highway trust fund so that our national network of highways remains a premiere system.

Mr. REID. I share my colleagues' concern about the losses to the highway trust fund that result from sale of ethanol-blended fuels. These losses to the highway trust fund have two causes. First, 2.5 cents of the existing tax on ethanol goes into the General Fund rather than the highway trust fund. Senator BAUCUS has introduced a bill to address this problem and I am a cosponsor of that legislation.

Second, the trust fund loses revenue because the tax on ethanol-blended gasoline is lower than taxes on other fuels. With the mandate contained in this bill, this subsidy will have an increasingly negative impact on revenues into the highway trust fund.

Next year we will reauthorize the Transportation Equity Act for the 21st Century. This Nation has tremendous transportation infrastructure needs that must be addressed if we are to keep our roads safe and our economy moving. As we begin work on this important legislation, I hope that we can address the significant losses to the trust fund that result from current ethanol policy. I look forward to working with my colleagues on this and other issues related to the reauthorization of TEA–21.

Mr. BAUCUS. Once again, I would like to state my intention of dealing with the ''5.3-cent problem'' as soon as possible. I look forward to working with these Senators and others as we work to protect the highway trust fund our Nation's source of funding for our surface transportation system.

EXHIBIT 1

RENEWABLE FUELS ASSOCIATION,
Washington, DC, March 22, 2002.

HON. JAMES M. INHOFE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATORS INHOFE, BAUCUS, SMITH, CONRAD, GRASSLEY, JEFFORDS, REID AND DASCHLE: The Renewable Fuels Association (RFA) appreciates your leadership on including a ''Renewable Fuel Standard'' in the Energy Policy Act of 2002 (S. 517). This program will provide significant energy, environmental and economic benefits for the Nation.

At the same time, we recognize that an increase in the production and use of renewable fuels, including ethanol, will have an impact on Federal highway excise tax receipts. The RFA does not believe any state should be penalized by the use of renewable fuels. Sound transportation policy and sound energy policy should not be mutually exclusive. Thus, as Congress works to reauthorize highway and transportation funding next year, we wholeheartedly encourage Congress to work towards addressing the issues surrounding the Highway Trust Fund and other transportation trust funds as they relate to ethanol.

Much has been made of ethanol's impact on Highway Trust Fund receipts in FY 2003, and at the appropriate time, prior to or during the reauthorization of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, we look forward to working with the United States Senate, the House of Representatives and the Administration, to create the appropriate program to address the needs of these programs.

Additionally, we support transferring the 2.5 cents currently directed to the General Fund for deficit reduction, back to the Highway Trust Fund as is included in the ''Energy Tax Incentives Act of 2002'' (S. 1979), which has been approved by the Senate Finance Committee earlier this year.

Transportation funding issues are not simple, and we look forward to working with you on this important issue on a unified front to address the many needs of the transportation, petroleum, and renewable fuels industries.

Sincerely,

BOB DINNEEN,
President.

Mr. GRASSLEY. Mr. President, I appreciate the efforts by Chairman BAUCUS for correcting an oversight by Congress when it failed to shift from the general fund to the highway trust fund, 2.5 cents per gallon collected from sales of gasohol. Similar adjustments for other fuels were made by a previous Congress, but not for gasohol.

I also want to thank the chairman for refraining from offering an amendment at this time that would require the general fund to contribute 5.3 cents to the highway trust fund for every gallon of gasohol sold.

It is wise to wait until next Congress when we can look at the big picture. Next year, we need to analyze all revenue sources for the highway trust fund to determine if adjustments are appropriate.

We also need to determine if adjustments are appropriate in the way we spend the Highway Trust Funds that are collected. For instance, we may determine that it makes better sense for mass transit subsidies to come from general funds instead of from the highway trust fund.

We may find that the subsidies for special motor fuels such as propane, methanol, and liquified natural gas should be paid from the general fund instead of the highway trust fund. These three fuels are not paying the full 18.3 cents per gallon. Propane receives a 4.7 cent subsidy, liquified natural gas receives a 6.4 cent subsidy, and methanol receives a 9.15 cent subsidy. Much needs to be addressed as we reauthorize the highway bill, and approaching this very important matter in a piecemeal fashion would be a mistake.

AVIATION EMISSIONS

Mr. BURNS. At this time, the General Accounting Office is working on a study—requested by the House Committee on Transportation and Infrastructure, Aviation Subcommittee—to conduct a comprehensive overview of key issues associated with emissions from aviation activities. This study would cover the same subject matter as contemplated in Section 803 of H.R. 4. At this time of tight budget constraints, it is not a good use of limited resources to produce redundant studies. Accordingly, I urge Senator MURKOWSKI in conference on the Energy Bill to strike the language in H.R. 4 requesting an aircraft emissions study.

Mr. MURKOWSKI. I agree that this study does appear duplicative.

Mr. BURNS. In addition to the GAO study, I wish to bring your attention to a voluntary effort to address emissions from the aviation sector, known as the ''EPA/FAA Local Air Quality Initiative.'' As part of this voluntary initiative, the Environmental Protection Agency, Federal Aviation Administration, States, airlines, aerospace manufacturers, and environmental groups are working together to develop analyses that address the same subject matter detailed in H.R. 4.

Mr. MURKOWSKI. I agree with my colleague from Montana that there is no need at this time for another study on this issue. The Senator has my assurance that I will work to remove this provision when we go to conference.

CLIMATE CHANGE PROVISIONS

Mr. BINGAMAN. Mr. President, the substitute for Title X of the Senate Amendment 2917, and title XIII, encompass significant bipartisan progress on the topic of climate change policy. This progress has been reached in discussions involving staff for many Senators with keen interests in this area, including myself and Senator MURKOWSKI on behalf of the Committee on Energy and Natural Resources, Senators BYRD and STEVENS, Senators KERRY and HAGEL, and the chair and ranking members of the Committee on Governmental Affairs and the Committee on Commerce, Science and Transportation. All these Committees that I just mentioned have important jurisdictional responsibilities under rule XXV related to the climate change provisions in this bill. There is one major area in the proposed changes to Senate Amendment 2917 that is still not in agreement, and that will be left to conference for further discussion, but will describe that in a moment. What has been agreed to, and for which there is commitment on the part of the co-sponsors of this amendment to advocate for here in the Senate and maintain in conference, is substantial.

First, we have developed a streamlined set of findings and a Sense of Congress relating to climate change, the shared international responsibility to address the problem, and the role of the United States in that matrix of shared responsibility. Senate Amendment 2917 had, in effect, two sets of findings in this regard. Developing a single set of agreed-to-statements, on the part of a broad cross-section of Senators with active interests in climate change policy, is an important accomplishment.

Second, we have taken the fundamental elements of S. 1008, introduced by Senators BYRD and STEVENS and agreed to nearly all of them. S. 1008 was introduced on June 8, 2001 and referred to the Committee on Governmental Affairs. That committee held a hearing on the bill on July 18, and marked the bill up in a business meeting on August 2, 2001. It was ordered reported by voice vote, and the Committee's report, as well as additional views of some members, was filed on November 15, 2001. This legislative history should be relevant to those who will be responsible for implementing these provisions. One of the agreed-to elements brought in from S. 1008 is a requirement for the development of a National Climate Change Strategy, which will be updated every 4 years. That Strategy and its updates will be reviewed by the National Academy of Sciences, which will provide its findings and recommendation both to the President and to Congress. The Strategy will be the central focus for integrating, across the government, a consideration of the broad range of activities and action that can be taken to reduce, avoid, and sequester greenhouse gas emissions both in the United States and in other countries. The development of the Strategy is also intended to draw on broad participation from the public, scientific bodies, academia, industry, and various levels of State, local, and tribal governments. Another agreed-to element from S. 1008 is the creation of an Office of Climate Change Technology in the Department of Energy, and authority for creation of other necessary offices to carry out the National Climate Change Strategy in other agencies. The DOE Office will have a special role in bridging the gap that now exists between the more conventional energy technology R&D programs now in place at DOE and the necessary research that is pointing the way to breakthrough technologies that could have a pronounced effect on our ability to meet the climate change challenge. The substantial increase in authorization for this function that was contained in S. 1008 is maintained.

Third, we have come to agreement on how to improve the structure of coordination of climate change science and monitoring programs across government, including the creation of a mechanism to fill gaps in research efforts among the various agency programs. Substantial portions of a bipartisan Commerce Committee bill, S. 1716, the Global Climate Change Act of 2001, introduced by Senators KERRY, STEVENS, HOLLINGS, INOUYE and AKAKA, are included in these sections. This bill emerged from a series of hearings held by the Committee during the 107th Congress on the state of scientific knowledge of climate change and its impacts and possible technological means to address the problem. These Commerce Committee provisions include amendments to the Global Change Research Act, as well as language that ensures the programs and capabilities of the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology to monitor, measure, understand, and respond to climate change and climate variability.

The one area of remaining disagreement in Title X relates to the proposed White House Office of National Climate Change Policy, in Section 1013 of the proposed text for Title X. I believe that it would be true to say that the co-sponsors of this amendment, at a minimum, all support having a locus of accountability for the development and implementation of climate change policy in the Executive Office of the President. All of us believe that it should be headed by a Senate-confirmed appointee. We did not, however, reach consensus on how this position should be structured and whether the appointee should be a new or existing position. We have agreed to move forward to conference with the language of S. 1008, with the expectation that we would be able to engage the White House at that point and come to a final resolution of how to provide for the central accountability in the Executive Office of the President that is acceptable to all parties.

On all other issues in Titles X and XIII aside from Section 1013, though, we are in agreement. We recommend their acceptance to our colleagues here in the Senate and, if adopted, plan to support these provisions strongly in conference.

Mr. MURKOWSKI. I would like to thank my colleague for his statement and indicate my support for the agreement that we have reached. These two titles of Senate Amendment 2917 lay the foundation for a sensible approach to managing the risk of climate change while providing the energy we will need for continued economic growth. The elements contained in these titles—improved scientific research, investment in development of improved energy technology, transfer of these technologies to markets at home and overseas, and coordinated climate policy development—are the same elements that were contained in S. 882 and S. 1776 in the 106th Congress, and S. 1294

in the 107th Congress, legislation that I was pleased to sponsor or cosponsor along with others. Title XIII also contains the elements of my legislation, S. 815, to improve research in the Arctic, including on topics of climate change. I want to thank Senator BINGAMAN and his staff for their leadership on forging this important bipartisan approach to our Nation's climate policy, and I want to thank all those Senators and staff who helped to bring these Titles into being.

Mr. BYRD. I would like to thank my colleagues for their statements and indicate my support for the agreement that we have reached. I would also note the historic nature of what has been negotiated, refined, and supported by the Senate here today. The passage of a national climate change strategy, along with the improved integration of science and technology programs, is critical to our Nation's long-term energy policy. I appreciate that other Members also believe that, at a minimum, there needs to be a Senate-confirmed appointee in the White House to oversee climate change policy. While I understand that there is not full agreement on this issue at this time, I believe that it is important to have a new, separate office in the White House to serve as a focal point for this multifaceted, multidimensional, long-term issue. After further discussion, I hope that these important provisions will be supported by the House energy conferees and the White House as a part of a national energy policy.

Mr. STEVENS. I would like to thank my colleagues for their statements and indicate my support for the agreement that we have reached. Title X, of Senate Amendment 2917, will address an immediate need to stimulate our Nation's research and development in innovative technologies and attempt to resolve any remaining uncertainties on the causes of climate change. Title XIII will provide the mechanisms to better assess coastal vulnerability from climate variances and improve climate monitoring, observing and prediction. The Barrow Arctic Research Center, authorized in Title XIII, is intended to replace the decades old and poorly equipped Naval Arctic Research Laboratory in Barrow and will perform the desperately needed scientific research on climate change that is already impacting America's Arctic.

Mr. LIEBERMAN. I would like to thank my colleagues for their statements and indicate my support for the agreement that we have reached. As Senator BINGAMAN has indicated, this language incorporates the essential components of S. 1008, the Climate Change Strategy and Technology Innovation Act of 2001. Senators BYRD and STEVENS introduced this important legislation, and I am proud that the Governmental Affairs Committee which I chair quickly endorsed the bill. The committee report accompanying the bill explains the reasoning behind the legislation and, as Senator BINGAMAN stated, should provide direction to those charged with executing the provisions of Title X. But I would like to summarize a few key points about why this is such an important contribution by Senators BYRD and STEVENS. First, they have found a constructive way to move forward in a bipartisan fashion on the issue of climate change, one of the most profound and daunting challenges we face as a Nation and, indeed, a world community. Second, the bill establishes a regime of accountability on climate change—under the legislation, the administration would be required to articulate a strategy to reach the long-agreed upon goal of stabilizing greenhouse gas concentrations in the atmosphere. Third, the bill provides support for the innovative technologies that will be essential to meet the challenge of climate change. This legislation is an important step forward on climate change, and I thank my colleagues for their work on this provision.

Mr. THOMPSON. I would like to thank my colleagues for their statements and indicate my support for the agreement that we have reached with regard to Title X. A lot of hard work has gone into this agreement. It is my belief that there are still many uncertainties with regard to climate change. However, I also believe that the potential risks of climate change warrant study, research and technological development. This substitute to Title X goes a long way towards achieving those goals. This amendment also recognizes that there are many contributors to climate change beyond CO_2 and I appreciate that black soot is included. My biggest concern with the substitute is the creation of a White House Office on Climate Change. As ranking member of the Committee on Governmental Affairs, I have great concerns about duplication and overlayering in government. I hope we can work this out in conference and I look forward to the White House weighing in on this important issue.

Mr. HOLLINGS. I would like to thank my colleagues for their statements and indicate my support for this bipartisan agreement on climate science and technology policy. The Committee on Commerce, Science, and Transportation over the years has developed and implemented the key statutes governing these matters. These include statutes establishing interagency science and research programs like the Global Climate Change Act, a coordinated Federal science and technology policy, such as is called for in the National Science and Technology Policy, Organization and Priorities Act, and those establishing the first tier atmospheric science and technology programs within NOAA and NIST. I fully agree that responsibility for policy relating to climate issues should rest with an individual who is accountable to Congress, much as we have done for overall science and technology policy by exercising our oversight authority over the White House Office of Science Technology Policy, which will shoulder substantial responsibilities under this agreement.

Mr. KERRY. I would like to thank my colleagues for their statements and indicate my support for the agreement that we have reached. Included in that agreement is a Sense of the Congress on the international climate change negotiations. The resolution originally passed the Foreign Relations Committee in August of 2001. At that time, Senator BIDEN and Senator ROCKEFELLER played an important role in crafting it. The text as passed out of Committee called on President Bush to engage in the international negotiations and to present a proposal to the Conference of the Parties by October 2001 for a revised Kyoto Protocol or other binding agreement. However, since the Committee acted the state of the international negotiations has fundamentally changed. The revised text, as included in this legislation, reflects those important changes. I appreciate the work of Senators BIDEN and HAGEL in crafting the updated text.

I believe that the bipartisan consensus also strengthens the scientific and technical work that needs to be carried out and improves upon the structure for doing so. I am particularly pleased that the agreement incorporates provisions from the Commerce Committee's bill that will bring the world-class science, technology, and planning expertise of the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST) and other Department of Commerce programs to bear on this problem—whether it is in climate observation, measurement and verification, information management, modeling and monitoring, technology development and transfer, or hazards planning and prevention. I am also pleased to see the bill includes language to establish a framework for a national coastal and ocean observing system, which is essential for climate prediction and coastal response planning.

Mr. HAGEL. I would like to thank Chairman BINGAMAN and Senator MURKOWSKI, and their staff, for their leadership in reaching an agreement on Title X. I would also like to thank my colleagues on both sides of the aisle for their efforts, particularly Senators BYRD and STEVENS who authored many of the original provisions included in Title X. This agreement represents the hard work of reaching a bipartisan consensus on a very challenging and difficult issue. While recognizing the need for greater coordination of climate change policy, I share Senator THOMPSON'S concerns regarding the overlapping bureaucracy created by a new White House office and look forward to addressing this issue more fully in conference. Nonetheless, through the agreement reached on Title X we have made considerable progress in advancing climate change policy on a bipartisan foundation.

Ms. SNOWE. I thank my esteemed colleagues, Senator BINGAMAN and Senator MURKOWSKI, and those Senators who have taken part in this colloquy today as it shows an unprecedented effort to forge a bipartisan agreement to address the various issues relating to climate change and what our domestic approach and strategy should be for short and long term goals for stabilizing greenhouse gas concentrations through U.S. actions. In addition, it will help the nation continue its efforts to carry out the objectives of the United Nations Framework Convention on Climate Change signed by President George H.W. Bush in 1992 and ratified by the U.S. Senate. The major objective of the Conference is for the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic, or manmade, interference with the climate system.

I am pleased that Title X calls for an Office of National Climate Change Policy in the White House and hope this direction is pursued as last year I expressed my concerns to the Administration that the national energy policy being developed in the White House should not be developed independently of our U.S. climate change policy. These policies should be seamlessly coordinated across a number of our federal agencies through a broad range of research activities and actions that begin to reduce our Nation's greenhouse gas emissions in an environmentally and technologically sound and economically feasible manner.

I am particularly pleased that Title XIII calls for an ocean and coastal observing system that will give us real time observations to help those of us on the Commerce Committee's Subcommittee on Atmosphere, Oceans and Fisheries greater understand, assess and respond to both human-induced and natural processes of climate change and support efforts to restore the health of and manage coastal and marine ecosystems and living resources. Activities will also include research on abrupt climate change urged in December 2001 by the National Academies for NOAA research to identify the likelihood and potential impact of a sudden change in climate in response to global warming. I look forward to working with my colleague sand the White House on this issue of great importance not only to me, but to the Nation, to the international community, and to those generations to follow.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for a period not to exceed 5 minutes each.

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

TRIBUTE TO CAPTAIN, SELECT, TARA L. LACAVERA, U.S. NAVY

Mr. LOTT. Mr. President, I wish to take this opportunity to recognize and say farewell to an outstanding Naval Officer, Captain, select, Tara L. LaCavera, upon her change of command from Naval Station Pascagoula. Throughout her career, Captain, select, LaCavera has served with distinction. It is my privilege to recognize her many accomplishments and to commend her for the superb service she has provided the Navy, the great State of Mississippi, and our Nation.

Captain, Select, LaCavera began her career as a Fleet Support Officer in 1980 after completing a Bachelor of Arts in Journalism from the University of Georgia and attending the Officer Candidate School in Newport, RI. She served with distinction early in her career as Message Center Officer on the staff of Commander, Oceanographic Systems Command Atlantic; Regional Evaluation Center Watch Officer and Surveillance Training Operational Procedures Standardization at Naval Facility Brawdy, Wales, UK; Fleet Telecommunications Officer, Naval Telecommunications Area Master Station, Naples, Italy; and Intelligence Officer at Commander Naval Allied Forces Mediterranean, Naples, Italy. Later assignments included Administrative Department Head and Public Affairs Officer at NAS Whiting Field, FL; Protocol Officer and Special Assistant to the Commander, Commander in Chief, U.S. Atlantic Fleet; and Executive Officer, Naval Station Norfolk, VA. She received a Master of Science degree in International Affairs from Troy State University in 1990 and was selected as a 1994 Federal Executive Fellow at the John F. Kennedy School of Government, Harvard University.

As Commanding Officer, Naval Station Pascagoula, Captain, select, LaCavera's foresight during the planning and execution of numerous construction projects greatly enhanced the quality of life for the many Sailors of the home ported ships and tenant commands. The results include construction of a new Gulf Coast USO and Learning Resource Center, major expansions of the Fire Department and cardio-fitness center/gymnasium, addition of an on-base service station, and site selection for an off-base military housing project. She was responsible for the intense coordination and certification procedures required for the unprecedented full weapons off-load of the USS COLE, DDG 67, that entailed the safe handling of 86.3 thousand pounds of explosives from the severely damaged destroyer. After the terrorist attack of September 11, 2001, Captain, select, LaCavera immediately executed an increased security posture, utilizing recalled reservist, auxiliary security force personnel, and available base assets to provide harbor patrol and protection for home ported ships and other pre-commissioning units located at Ingalls Shipyard. Her strong guidance and leadership ensured that Naval Station Pascagoula's personnel, facilities, and weapons platforms were well protected.

Throughout her distinguished career, Captain, select, LaCavera has served the United States Navy and the nation with pride and excellence. She has been an integral member of, and contributed greatly to, the best-trained, best-equipped, and best-prepared naval force in the history of the world. Captain, select, LaCavera's superb leadership, integrity, and limitless energy have had a profound impact on Naval Station Pascagoula and will continue to positively impact the United States Navy and our nation. Captain, select, LaCavera relinquishes her command on April 25, 2002 and reports as Chief Staff Officer, Naval Surface Warfare Center, Dahlgren, VA where she will continue her successful career. On behalf of my colleagues on both sides of the aisle, I wish Captain, select, LaCavera ''Fair Winds and Following Seas.''

SCOTTIE STEPHENSON

Mr. HELMS. Mr. President, this past week a deep sense of sadness settled in on the Helms family—and countless other families as well. Scottie Stephenson's life was finally ended at age 80 by an unyielding illness.

Scottie had gone on to her reward after 80 years of loving and being loved by everybody around her. For various reasons, I had to cancel my plans to be there when the final tributes were being paid to this remarkable lady who was declared many times to be the First Lady of Capitol Broadcasting Company in Raleigh—which, is where I began my years in broadcasting—and where I ended them when in 1972 I allowed myself to be talked into seeking election to the U.S. Senate.

Mrs. Louise ''Scottie'' Stephenson never quite accepted the death of her handsome husband, Nelson W. Stephenson, whom she married in 1948 but who died in 1961.

Scottie knew the end was approaching early this year. We discussed it a number of times always with the conclusion that when it happened, she would probably be the No. One Gate Keeper serving Saint Peter. As her condition worsened, I set aside a time each day to be devoted to discussions with Scottie about those years gone by when she and I were officers of Capitol Broadcasting Company. Those, she used to remark, were the ''salad days''.

Then came that inevitable morning when I called and a tape responded. Scottie had mentioned that she would arrange that.

Jim Goodmon, now president and CEO of Capitol Broadcasting Company, was in high school when he began working nights at Capitol Broadcasting.

Our hometown morning paper, the News and Observer, published in its April 17 editions a comprehensive obituary outlining many of the aspects of

Scottie's remarkable life. I ask unanimous consent that it and an editorial from the same paper be printed in the RECORD.

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

[The News & Observer, Wed., Apr. 17 2002]

LOUISE 'SOTTIE' STEPHENSON—'FIRST LADY OF CAPITOL BROADCASTING' WORKED THERE 58 YEARS

(By Sarah Lindenfeld Hall)

Louise ''Scottie'' Stephenson, known as the first lady of Capitol Broadcasting Co., who helped win the original license for WRAL–TV, died Monday morning after a long illness. She was 80.

Stephenson starting working for Capitol 58 years ago and was the communications company's longest-serving employee, with a tenure even longer than that of its founder, A.J. Fletcher. She spent at least three days a week at work until October, when she became ill, but continued to work at home. In February, she attended a board meeting of the A.J. Fletcher Foundation, held at Springmoor retirement community where she lived so she could participate.

''She was a great lady, and she had the respect of everybody that's ever worked for Capitol, and we're going to really miss her personally and we're going to miss her professionally,'' said James F. Goodmon, president and CEO of Capitol Broadcasting Co. ''Scottie was sort of our contact with who we are and what we stand for and was an important continuity beginning with the founding of the TV station. She was there when it started.''

Stephenson started her career as a receptionist, secretary and record librarian for what was then WRAL–AM. She answered the phones for the popular radio show ''The Trading Post,'' with Fred Fletcher as host, where listeners could swap and sell goods over the air. She became the company's corporate secretary and member of the board of directors in 1953.

She was the only woman on a five-member team seeking a television station license for WRAL.

She helped prepare 3,000 pages of paperwork and testified before the Federal Communications Commission in Washington, D.C., during the 75-day hearing, according to a Capitol press release. The company received its license in December 1956.

Stephenson, a native of Goldsboro, graduated from Broughton High School and took classes at N.C. State University. She married Nelson W. ''Steve'' Stephenson in May 1948. He died in 1961, and she never remarried.

Stephenson served on the board of the Fletcher Foundation and volunteered with local arts groups. For more than four decades, she coordinated the Golden Agers Club Christmas parties in Raleigh. And for a half-century, Stephenson had lunch once a week with her good friend Pota Vallas, whose family founded National Art Interiors at Hillsborough Street and Glenwood Avenue.

Scottie was active in the Triangle community as well, serving on the board of the A.J. Fletcher Foundation and supporting the arts through volunteer work with the Raleigh Fine Arts Society and the North Carolina Symphony. She coordinated the Golden Age Club of Raleigh's annual Christmas luncheon for over four decades and saw that luncheon grow from 50 to over 1,500 people. Scottie served on the Board of Directors and as Secretary of the Tammy Lynn Center, a resident care facility for severely retarded children, and worked with a variety of other community organizations.

In 1992, she was named Business and Professional Woman of the Year of the Wake County Academy of Women, sponsored by the YWCA. She was also the first recipient of the Junior Women's Club Outstanding Working Member award.

Scottie most recently resided at Springmoor where she was once again a leader and an inspiration to many. She organized and coordinated outings for her friends to everything from dinner parties to Durham Bulls games.

She was preceded in death by her husband, Nelson W. ''Steve'' Stephenson, in 1961. Her brother, Sam D. Scott, Jr.; sister, Nancy Scott Reid; and niece, Betty Scott Toomes, also preceded her in death.

Funeral services will be 10 a.m. Thursday, April 18 at St. Michael's Episcopal Church in Raleigh. Burial will be at Montlawn Memorial Park.

Surviving family members include niece, Alice Reid Ritter and husband, Doug of Severna Park, MD; nephew, Samuel Scott Reid and wife, Kathy of Raleigh, NC; niece, Nancy Scott Young and husband, Gary of Manhattan, KS; nephew, Sam D. Scott III and wife, Carolyn of Lousville, KY; great-nephew, Christopher James Stephenson and wife, Ann; and many great nieces and nephews. She is also survived by longtime friend, Roberta Glover.

[From the News & Observer]

ALWAYS ON THE GO

Even after she moved to the Springmoor retirement community in Raleigh, Scottie Stephenson had not retired from her vocation, and avocation, of getting things done. At Springmoor, she organized her neighbors in all sorts of activities, getting them out and about.

For 58 years, Stephenson, who died Monday at the age of 80, served Raleigh's Capitol Broadcasting Company—the first employee and the one who worked there longer than anyone, including the founder, the late A.J. Fletcher. She was out and about there, too—from helping the company obtain the first television station license in Raleigh for WRAL–TV, to writing commercials, to filing complicated federal reports. Stephenson, a gracious and merry person, also served in a multitude of community endeavors through volunteer work in the arts and as a board member of the A.J. Fletcher Foundation. For thousands of citizens in the Capital City, she'll be remembered as coordinating the Golden Age Club's annual Christmas luncheon.

Pillars of the community, such people are called, and too often as they become older their accomplishments seem to fade in memory. It should not be so, for those accomplishments, by one person at a time, build a city. And thankfully, it was not so with Scottie Stephenson, who was acclaimed after her death in on-air tributes from her latest generation of admirers at WRAL. She would have appreciated them. And they were well-earned.

RECOGNITION OF REVEREND KENNETH DYKSTRA

Mr. GRASSLEY. Mr. President, today I rise in recognition of the steadfast service and commitment of a principled man of God, Reverend Kenneth Dykstra of Pella, IA. Reverend Dykstra served in the capacity as Senior Pastor of Third Reformed Church in Pella from 1969 to 1979. During this period he was involved and actively participated in two extremely consequential missionary trips, one to India and the other to Mexico—both with the Reformed Churches of America.

Kenneth Dykstra devoted the next 8 years of his admirable career to prison inmates through a Bible study ministry as the Senior Pastor with the Worthington Reformed Church in Worthington, MN.

Reverend Dykstra returned home to the beautiful state of Iowa in 1987 to retire in the Dutch community of historic Pella. Knowing ''true'' retirement for a pastor is rarely an option, he served in a variety of roles including mentor for a church's new pastor and as a Minister of Calling with focused attention on visitations to shut-ins and nursing home residents.

Kenneth Dykstra's significant contribution to not only those his ministry touched, but also the entire State of Iowa, in no way goes unnoticed. I thank and commend him today for all of his dedication, commitment and positive influence on those fortunate enough to know him.

ADDITIONAL STATEMENTS

OUR WESTERN AGENDA

• Mr. CRAIG. Mr. President, as I sit here and look around at my surroundings, there is a dominant feature, our Nation's Capitol. The Rotunda is a landmark that is recognized throughout our country.

What is noticeably missing from this landscape is Idaho!

Our Nation's Capitol is vastly different from Idaho. Each day, Congressmen come to work and see the historical landmarks of the Capitol. They do not see Idaho's vast mountains, rural countrysides, expansive farmland, or raging rivers, the landmarks we all feel in part define Idaho.

Every day, I work to promote and advocate for our Western principles and our Western lifestyle. These Western principles are the touchstone for my service in Congress.

And every day, my goal is to work to establish Federal policies that are responsive to the needs and interests of Idaho and the West, as well as to lead in developing natural resource and energy policies that protect Western water and ensure a clean, safe environment, consistent with sound science, community stability, economic growth and the principle of multiple use.

I am a fiscal conservative who believes in the principles of multiple use, conservation, and management at the local level. I believe these fundamental ideas should guide all natural resource decisions. Natural resource management is about balancing the needs of the people with the needs of the land. I have never met someone who wants dirty air, undrinkable water, or devastated forests. We all want a livable environment. Where people differ is over how these goals will be accomplished.

That being said, I have compiled all of my thoughts and feelings on Western issues to create what I call ''Our Western Agenda.''

''Our Western Agenda'' is designed to provide suggestions on specific Idaho and Western issues. It proposes a compass for how our natural resource policy should address these issues.

While the list of issues that touch the West is much longer than this, I believe the following ideas comprise the core. First, I believe access must be guaranteed to our public lands for multiple uses, including ranching, mining, and recreation.

In order to maintain the values of public lands, I believe the most critical characteristic that needs to be preserved is access. Conservation and multiple use, for a century now the dominant policy of our public lands, require access. Only by accessing these areas can active management take place, providing protection for our public lands against disease, wildfire, and insect epidemics.

Next, the long struggle over public access to our lands has left many with battle fatigue and I believe through collaborative conservation, mutual goals of various user groups can be accomplished. Clearly, we need a new approach to solving natural resource conflicts, user conflicts, and management conflicts.

In order to resolve conflict, all the players need to come ''to the table'' to explore our shared ideals instead of reinforcing our disagreements.

I think we should adopt the strategies of some local activists who have turned away from the existing national standoff. Instead, they are working to bridge differences, to find a common solution that reflects the national environmental ethic. In a phrase: collaborative conservation.

I believe collaborative conservation should include the following. We must discard the doctrine of national communities of interest, where decision makers are selected from national organizations, and return to a doctrine of local community interest. We should not allow Federal bureaucracies and national organizations to upset the fragile process of local consensus making.

We need a process of continuous improvement in reducing our impacts on the land. We must stipulate that for all the progress made by commodity-producing industries, loggers and ranchers, and recreationists, we can always do better.

Federal Government policies desperately need modernization. The Government needs to manage better. It must not allow restrictive approaches based upon inflexible national mandates to trump what would otherwise be environmentally sound activities and shut out local people who have to live with the consequences of Federal decisions.

As a community, we need to come together to solve the challenges of multiple-use in order to achieve conservation and balance on our public lands. I also believe as our Nation's energy policy continues to develop, we will continue to look to have access to our public lands to provide resources.

During the past decade, we have heard a chorus of energy marketers and environmentalists sing the praises of natural gas as a cost-effective and environmentally sensitive energy source. The past administration hailed natural gas as the cleanest fuel for home heating and aggressively pushed utility companies to convert oil and coal-fired electric plants to gas.

The irony is that all this aggressive promotion has not been backed by commensurate efforts to ensure supply. Indeed, the Clinton administration complicated our ability to retrieve adequate supplies of gas by locking up Federal land deposits of this valuable energy source, with an estimated 40 percent of potential gas resources in the United States on Federal lands that are either closed to exploration or covered by severe restrictions.

Increases in Federal red tape and bureaucratic inefficiency raised consumer costs while denying consumers the choices they were promised. The fact of the matter is as the United States enters the 21st century, our Nation lacks a readily available and sufficient supply of natural gas to satisfy current demand, let alone the increasing demand that we expect in the immediate future. Consequently, natural gas prices are high and will likely rise in the future.

This will not change until we reverse government policies that have foreclosed opportunities for choice of fuels.

Furthermore, failure to encourage investment in the transmission of electricity has threatened the reliability of service throughout the country.

The Department of Energy has estimated that we will need to construct over the next several years an additional 255,000 miles of distribution lines, at an estimated cost of $120 to $150 billion, to ensure that our electric system remains the most reliable in the world.

The notion that our Nation can rely so heavily on natural gas, maintain severe restrictions on exploration and production, and still enjoy low prices is, as Secretary Abraham has stated, ''a dangerous assumption.''

Last, I believe a common sense approach will protect our public lands against catastrophic fires, weeds, and exclusive policies. Fire is a natural component of any ecosystem. It stimulates plant growth, maintains a plant understory, and creates diversity. All of these aspects are healthy characteristics of a thriving forest.

However, when fire is suppressed and active forest management activities—thinning, prescribed burns, etc.—that mimic fire behavior are ignored, this is a prescription for disaster.

The neglectful management practices of the past will continue to plague our public lands unless we pursue active management practices that result in a balanced ecosystem. In order to prevent devastating fires, the agencies need the resources and flexibility to make management decisions that maintain our public lands.

Increased fuel loads create catastrophic fires, contribute to declining watersheds, increase sedimentation and decrease water quality, and lead to the demise of fisheries.

This disastrous spiral must be stopped. Non-native weeds are a serious problem on both public and private lands across the Nation. They are particularly troublesome in the West, where much of our land is entrusted to the management of the Federal Government.

Like a ''slow burning wildfire,'' noxious weeds take land out of production, force native species off the land, and interrupt the commerce and activities of all those who rely on the land for their livelihoods, including farmers, ranchers, recreationists, and others.

Forests and rangelands are dynamic systems that constantly change in response to both natural and man-made events. They are never static. Any scientist will tell you that a healthy forest or rangeland requires active management. Like your backyard garden, you can't just let it go and expect it to be productive and healthy. You have to actively manage the resource by doing everything from thinning trees, to spraying for weeds, to maintaining roads.

Without access to our lands, it is impossible to manage our public lands properly. Without access, we will end up with unhealthy lands that are prime candidates for catastrophic wildfires and insect infestations of epic proportions.

It is time to move our public lands management agencies away from a ''one-size-fits all'' management policy and back toward their original missions.

As set forth in law, the missions are to achieve high-quality land management under the sustainable multiple-use management concept to meet the diverse needs of all users.

In all of this, I believe we still have an Old West, a rural society centered on the original commodity-producing industries and agriculture, and then there is a New West, centered on the vigorous quest for a quality of life that includes the enjoyment of the outdoors.

What ties ''the old'' and ''the new'' together is an appreciation for the resources and the value that multiple uses contribute to our livelihoods and communities.

Natural resource management is about bringing the Old West and the New West together to balance the needs of all the people with the needs of the land.●

HADASSAH'S 90TH ANNIVERSARY

● Mr. SCHUMER. Mr. President, I rise today to speak in honor of Hadassah, the Women's Zionist Organization of America, on its 90th Anniversary. Hadassah, the largest Zionist, largest

Jewish, and largest women's membership organization in the country, was founded in 1912 by Henrietta Szold to help meet medical needs in what was then Palestine.

Since that time, Hadassah has been a leading force in Israel's medical needs through Mt. Scopus Hospital, Ein Karem Hospital, and various clinics across the country. Hadassah hospitals, in addition to serving as a model of peaceful coexistence in the Middle East, provide state-of-the-art health care to 600,000 patients a year—regardless of race, religion, creed or national origin—and often treat the most critically wounded in the region's ongoing conflicts.

Through the College of Technology, the Career Counseling Institute, and Youth Villages in Israel and through Young Judaea and the Hadassah Leadership Academy in the United States, Hadassah has been critical in upgrading the educational and learning opportunities for the people of Israel.

In the United States, Hadassah women sold $200 million in US World War II bonds as its first national domestic effort. Since then, Hadassah women have been actively engaged in health education programs on breast cancer and osteoporosis; voter registration efforts; Jewish education; grassroots advocacy on US-Israel relations, Jewish communal concerns; women's issues; humanitarian relief to distressed communities and countries; and volunteer work in literacy programs and at domestic violence shelters.

In conclusion, I would like to acknowledge the continued efforts of Hadassah members and their ninety year history.●

TRIBUTE TO FREDERICK BISHOP

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Frederick W. Bishop of Hooksett, NH. Frederick has been chosen as New Hampshire's Citizen of the Year for his exceptional leadership and devoted service to the community.

I commend his active role in both the community of Hooksett and the Granite State. He has served countless hours on Boards and holds positions in numerous organizations within the state. Mr. Bishop has served as Chairman of the Hooksett Police Commission, President of the Hooksett Men's Club, member of the Memorial School Booster's Club, Chairman of the Hooksett Winter Carnival, Treasurer of the Hooksett Underhill School PTO, Chairman of the Librarian of the Year Award Event, and numerous other positions and memberships.

Along with his positions, Frederick has found time to serve as a Little League Coach, a member of the Hooksett Emergency Medical Services Committee, and a volunteer for Catholic Charities. Frederick is also a member of the Business and Industry Association of NH, the New Hampshire Easter Seal Society, and the Kiwanis Club. His efforts to improve the community in which he lives serve as a positive role model for people in towns across the country. He has been instrumental in raising the membership of the Hooksett Kiwanis Club by personally sponsoring 180 new members.

Frederick Bishop is one of the most deserving candidates of this recognition that I have encountered. His efforts and devotion have made the Town of Hooksett a better place to live. He should be proud of his accomplishments and service. It is truly an honor to represent him in the U.S. Senate.●

STEEL INDUSTRY RETIREE BENEFITS PROTECTION ACT OF 2002

● Mr. WELLSTONE. Mr. President, I am pleased to join as a cosponsor of this extremely important legislation, S. 2189, the Steel Industry Retiree Benefits Protection Act of 2002. This legislation is coming none too soon, for hardworking steelworker retirees who, through no fault of their own are facing the loss of health and death benefits, and for the industry itself that needs this relief in order to revitalize itself and remain competitive.

In particular, the act would preserve the health and death benefits for the retirees of steel, iron ore, and coke companies facing consolidation or liquidation. The bill establishes a health benefits program for steel retirees of acquired or shuttered steel companies modeled on health plans available for Federal workers. Like its model, the new program will require retirees to pay reasonable monthly premiums, will provide coverage for prescription drugs, and will deliver medical care through preferred provider organizations. In addition to health coverage, the proposed legislation extends a $5,000 death benefit to the designated beneficiary of each enrolled retiree.

The hard working families of the Iron Range of Minnesota are facing excruciatingly tough times. Their situation is truly desperate and they need our help.

The taconite industry in which generations of workers have proudly labored has been ravaged by surges of semi-finished steel slab dumped in this country by our trading partners. Many have lost their jobs, just last year 1,400 workers were laid off when LTV Steel Mining closed its doors. Now, 10,000 former employees, their spouses and dependents face loss of health insurance and many are finding that they stand to lose a good portion of the pensions the company had promised.

Last month, the HELP Committee held hearings on the need for legacy cost legislation both for retirees and for the industry. The testimony was riveting. The need compelling. My good friend, Jerry Fallos, president of Local 4108 of the United Steelworkers of America, testified at those hearings. The stories he had to tell were grim indeed.

As Jerry said, the people of the Iron Range are used to hard times. They have weathered any number of challenges over the years. They are good people, proud, hard-working, the best you can find anywhere. They are survivors, and they will get through these difficult times as well. They have given much to their country, and now they need our help.

I am determined to give them that help. The good people of the range have responded to their country in its times of needs. Over the years our Nation's economy flourished and our manufacturing industries boomed from the iron ore produced through the labors of steelworkers on the range.

There is both a moral imperative to meeting this challenge as well as a business necessity in doing so.

As a matter of fairness and economic justice, we must help the working families who gave their all to this industry and who, through no fault of their own, indeed because of the unfair practices of our trading partners, find themselves without jobs, health care or adequate pensions. In the last 2 years, 32 U.S. steel companies have filed for bankruptcy, and these companies represent nearly 30 percent of our domestic steel making capacity. These failures were not the fault of the workers at these companies. These failures resulted from unfair and predatory practices of our trading partners over an extended period.

Equally as important, our domestic steel industry will simply not be able to revitalize itself and remain competitive while shouldering the massive legacy cost burdens that exist. With on average three retirees for every active employee, the industry faces virtually insurmountable barriers. Government assistance is essential and we will need the President's active support for legacy cost legislation if we are to prevail.

Unfortunately, however, the President appears to have washed his hands of this problem. He claims to have done his part by providing section 201 relief to the industry. The issue of legacy costs, he says, for the sake of retirees and to permit industry consolidation, is someone else's problem.

It is not, however, as simple as that. First, the jury is still out on whether the section 201 relief will in fact be that meaningful. According to recent accounts, there are over 1,000 exceptions to the President's section 201 decisions being considered. And, Secretary O'Neill is reported as saying that he suspects ''a significant proportion of them will be favorably decided.'' Moreover, the President's section 201 decision did nothing for the iron workers in Minnesota and Michigan. While the President imposed a fairly significant tariff on every other product category for which the International Trade Commission found injury, for steel slab he decided to impose ''tariff rate quotas.'' This brings us virtually no relief. Nearly 7 million tons of steel slab can continue to be dumped on our shores before any tariff is assessed. The injury will continue.

Second, by ignoring the legacy cost issue, the President is walking away from the hard work that must be done to promote industry consolidation and re-vitalization, an objective this administration has been advancing from the start.

We need serious legacy cost legislation and that is precisely what this bill represents. I urge my colleagues in the Senate and the House to support its passage. And I urge the President to take another look at this issue and work with us on a meaningful solution.

The viability of our domestic steel industry, and our national security, are at stake here. We must act, and we must act soon.●

RECOGNITION OF MR. BEN LAMENSDORF

● Mr. COCHRAN. Mr. President, I am pleased to commend Mr. Ben Lamensdorf of Cary, MS, for his distinguished service as President of Delta Council.

Delta Council is an economic development organization representing eighteen counties of Northwest Mississippi. Organized in 1935, Delta Council brings together the agricultural, business, and professional leadership of the area to solve common problems and promote the economic development of the Mississippi Delta region.

As President of Delta Council, Ben has been an effective leader in promoting sound agricultural policy in a year when that issue has been so vital to rural America. His insights and experience have been of invaluable assistance to my staff and me as we addressed policies to make American agriculture stronger.

Ben also distinguished himself in other areas of public policy that have impacted on his beloved Mississippi Delta region. He has been a proponent for better schools and innovative educational models; he has supported transportation and water resource projects that are vital to the future of Northwest Mississippi; his personal farming practices have served as an example for sound conservation and environmental measures, and he has been a leader in defining and shaping alliances in health care that can have both an immediate and long-term impact on the well-being of citizens in the Delta.

The level of Ben's commitment to Mississippi and its people has been evident since he returned home to Cary after graduating from Mississippi State University. In addition to operating a cotton, soybean, wheat, and pecan farm in Sharkey and Issaquena Counties, he owns and operate Grundfest and Klaus Gin.

Ben serves as a chairman of the board for the Bank of Anguilla. He is a member of the Anshe Chesed Temple in Vicksburg and serves on the board of the Institute of Southern Jewish Life. A Founding Director and current Board member of Delta wildlife. Ben has also served as a member of the Sharkey-Iaasquena Soil and Water Commission.

I congratulate Ben Lamensdorf for his contributions to the Delta region Mississippi and the Nation, and I look forward to his future contributions in improving the quality of life for our citizens.●

EXPEDITED BANKRUPTCY PROCEDURES

● Mrs. CARNAHAN. Mr. President, the expedited bankruptcy procedures provided in Chapter 12 of the bankruptcy code are extremely important for family farmers struggling during difficult times. I have been working diligently to extend these provisions and to make them permanent. I am pleased that both the Farm Bill and the Bankruptcy Bill Conference Committees are currently considering permanent extensions. The bill we are about to pass is an important stop-gap measure that will provide much needed assistance to family farmers until a permanent extension is enacted.●

MURKOWSKI AND STEVENS AMENDMENTS, NO. 3132 AND NO. 3133 TO S. 517, THE ENERGY REFORM ACT

● Mr. CHAFEE. Mr. President, I rise today to explain my opposition to the Murkowski and Stevens amendments to S. 517, the Energy Reform bill.

Drilling in the Arctic National Wildlife Refuge is not the only solution to our dependence on foreign oil. I am opposed to drilling in the Arctic Refuge because I believe there should be a comprehensive national energy policy.

During the Senate's ongoing consideration of S. 517, I have voted in favor of strengthening Corporate Average Fuel Economy (CAFE) standards for SUVs and light trucks. By increasing oil savings, stronger CAFE standards would make us less dependent on foreign fuel and demonstrate a real commitment to conservation. The CAFE amendment failed. I voted in support of increasing the amount of renewable fuels in our energy portfolio. This provision failed. I have also supported tax credits for domestic marginal well production and providing incentives to consumers for purchasing alternative technology vehicles and improving the efficiency of their homes and offices. I am optimistic that these efforts will be successful.

I am prepared to support a national energy policy that balances our energy needs with strong environmental protection. Reducing our dependence on foreign oil is a national priority, but should not come solely at the expense of our nation's precious natural resources.

First established by President Eisenhower in 1960, the Arctic National Wildlife Refuge was created and later expanded to preserve the area's unique wilderness and wildlife values by protecting fish and wildlife populations in their natural diversity. The 1.5 million acres of the Refuge's coastal plain proposed for oil exploration and drilling, known as the ''1002'' area, is the most biologically productive part of the Refuge. The coastal plain is home to a diverse collection of wildlife including polar and grizzly bear populations, musk oxen, 180 bird species, and one of the largest caribou herds in North America.

Each year, the Porcupine Caribou herd—over 129,000 members strong—migrates 400 miles from wintering grounds in the north central Canadian Yukon to the Arctic Refuge coastal plain where they give birth to their young. In a typical year, the herd can birth up to 40–50,000 calves.

The importance of the Porcupine Caribou herd can best be illustrated by a 1987 Conservation Agreement between the Governments of Canada and the United States. The Agreement recognizes the value of the Porcupine herd and the importance of protecting their birthing grounds to ensure the future sustainability of the population as a vital part of the Refuge's ecological system. In Canada, land north of the Porcupine River was withdrawn from development in 1978. Oil exploration and drilling in the Porcupine Caribou herd's prime calving grounds remains an item of contention between the United States and Canada and threatens the future of the Conservation Agreement.

I am prepared to support a national energy policy that balances our energy needs with strong environmental protection. Reducing our dependence on foreign oil is a national priority, but should not come at the expense of our nation's precious natural resources. Allowing oil and gas development in the coastal plain promises only short-term benefits that may irreparably damage the wildlife values and unique vitality of the Arctic Refuge.

Opening the Arctic Refuge to oil exploration and drilling should not be the primary component of the effort to reduce our dependence on foreign oil. There are other steps we should take that would provide more benefits in the long term.●

NATIONAL CRIME VICTIMS RIGHTS WEEK

● Mr. JOHNSON. Mr. President, statistics show that a woman is raped every 5 minutes in the United States and that one in every three adult women experiences at least one physical assault by a partner during adulthood. In fact, more women are injured by domestic violence each year than by automobile accidents and cancer deaths combined. Statistics that report the abuse of our children are equally staggering. Nationwide, an estimated 826,000 children are victims of abuse and neglect, a number greater than the population of my home State of South Dakota.

April is recognized as both Child Abuse Prevention Month and Sexual Assault Awareness Month. This week,

the week of April 21–27, is National Crime Victims Rights Week and is a good time to take a serious look at the progress we have made in addressing the problem of abuse against women and children in our communities. In 1983, I introduced legislation in the South Dakota State Legislature to use marriage license fees to help fund domestic abuse shelters. At that time, thousands of South Dakota women and children were in need of shelters and programs to help them. However, few people wanted to acknowledge that domestic abuse occurred in their communities, or even in their homes.

During the last 7 years, I have led efforts in the U.S. Congress to authorize the original Violence Against Women Act, VAWA, and, most recently, expand and improve the program to assist rural communities. South Dakota has received over $8 million in VAWA funds for women's shelters and family violence prevention services. In addition, the law has doubled prison time for repeat sex offenders, established mandatory restitution to victims of violence against women, and strengthened interstate enforcement of violent crimes against women. South Dakotans can also call a nationwide toll-free hotline for immediate crisis intervention help and free referrals to local services. The number to call for help is 1–800–799–SAFE.

In South Dakota last year, over 5,500 women were provided assistance in domestic violence shelters and outreach centers thanks, in part, to VAWA funds. While I am pleased that we have made significant progress in getting resources to thousands of South Dakota women in need, it is important to look beyond the numbers. Mr. President, 5,500 neighbors, sisters, daughters, and wives in South Dakota were victimized by abuse last year. Thousands of other women are abused and do not seek help. We must also recognize that the problem is multiplied on the reservations where Native American women are abused at two-and-a-half times the national rate and are more than twice as likely to be rape victims as any other race of women.

The words of a domestic abuse survivor may best illustrate the need to remain vigilant in Congress and in our communities on preventing domestic abuse. A woman from my State wrote me and explained that she was abused as a child, raped as a teenager, and emotionally abused as a wife. Her grandchildren were also abused. In her letter, she pleaded:

> Don't let another woman go through what I went through, and please don't let another child go through what my grandchildren have gone through. You can make a difference.

We all can make a difference by protecting women and children from violence and abuse.●

GREEK SUPPORT FOR THE WAR ON TERROR

● Mr. WARNER. Mr. President, I ask to have printed in the RECORD the remarks of President George W. Bush in regard to the stance that Greece has taken in our war against terror.

The remarks follow.

PRESIDENT BUSH:

There's a huge number of Greek Americans who live in our country, who still have got great fondness for the country of their ancestors.

I am most appreciative of Greece's strong stand against terror. Greece has been a friend in our mutual concerns about routing our terror around the world, and I want to thank them for that very much.

I'm also very appreciative of Greek Prime Minister Simitis' administration working with Turkey. Relations have improved with Turkey, and as a result the world is better off. And I want to thank Greece for their vision, for their Foreign Ministry's hard work to do what is right for the world, to make the world more peaceful.●

TRIBUTE TO THE HONORABLE THURMAN G. ADAMS, JR.

● Mr. BIDEN. Mr. President, on May 3, 2002, the Delaware State Bar Association will present its prestigious Liberty Bell Award to Thurman G. Adams, Jr.

I could introduce Thurman Adams to my colleagues in any number of ways, he is the dean of the Delaware State Senate, the majority leader, and by the time his current term ends, he will have served longer than any Delaware State Senator in history. And Delaware has a long history.

Senator Adams has served on and, in fact, chaired virtually every major committee, including 25 years-and-counting as chairman of the Executive Committee, current chairmanship of the Banking Committee, past chairmanship of the Agriculture Committee, and current service on the Judiciary, Administrative Services, Permanent Rules and Ethics Committees, as well as his role in the Senate leadership.

I could also introduce Thurman Adams as, in many ways, the quintessential Delawarean, I should add Sussex Countian, and I can pinpoint it even more to his beloved town of Bridgeville.

Like his father, Thurman was born on the family farm on the road now known as Adams Road. His grandson lives there now, and runs the farming operations day-to-day. Thurman graduated from Bridgeville High School, and then from the University of Delaware. After college, he joined the family feed, grain and farm business, T.G. Adams & Sons, which he now serves as president.

So, I could introduce Thurman Adams as one of the longest serving and most influential leaders of our State. I could introduce him as representing the great tradition of Delaware agriculture, Delaware towns, Delaware small business and Delaware families.

I also have the very great privilege of being able to introduce Thurman Adams as my friend, a friend I deeply admire as a man of his word, a man of conviction, a man of values and of principle.

And in a much higher tribute to him, I could introduce Thurman as the husband of one of the truly great ladies I have met in my life, Hilda McCabe Adams.

I have been with Hilda and Thurman Adams in times of victory and celebration, and I have been with them in times of tragedy and loss. In every circumstance, they have been the definition of class, and they have more integrity in their little fingers than most of us will be able to summon in our lifetimes.

Their journey together has been inspiring to those of us who are lucky enough to be around them, but it has not always been easy. They endured the loss of an infant grandchild, and then tragically in May of 2000, the death of that baby's father, their son, Brent McCabe Adams, Sr., at the age of 45. And now they are facing, with characteristic strength and courage, a serious illness for Hilda.

In honoring Thurman Adams, the Delaware Bar Association will, rightly, pay tribute to his decades of service to our State, his particular contribution as a leader on the Judiciary Committee, and his role in leading the Senate confirmation process, never as a mere matter of procedure, but thoughtfully and skillfully, for so many members of the Bar, and other Delawareans, who have been appointed to positions within our State government.

For my part, I would like to pay tribute to Thurman and Hilda Adams as, simply, exceptional and inspiring human beings, the best of citizens, the best of neighbors, and the best friends anyone could ask for. They just don't make them like Hilda and Thurman very often. We in Delaware are very lucky.●

LOCAL LAW ENFORCEMENT ACT OF 2001

● Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 18, 1993 in Menomonie, WI. A lesbian college student was beaten by three men and a woman. During the beating, the attackers were heard to yell antilebian slurs.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe

that by passing this legislation and changing current law, we can change hearts and minds as well.●

JEWISH HERITAGE WEEK

● Mr. LEVIN. Mr. President, it is with great pleasure I rise today to call my colleagues' attention to Jewish Heritage Week, which was recognized from April 14 through 21, 2002.

Every spring since 1976, during the season in which Jewish people commemorate Passover, Yom Hashoah (Holocaust Memorial Day) and Yom Ha'atzmaut (Israel Independence Day), a week is set aside to promote and encourage all Americans to learn about the history of Jewish Americans and to participate in activities that highlight the accomplishments of these citizens. It is in light of that charge I come to the Senate floor to highlight this important week.

For centuries, Jews from across the globe have come to America seeking the ability to worship in freedom and to pursue their individual and hopes and dreams in peace. Throughout the many years, nearly every facet of American culture has been cultivated and enriched by the talents of Jewish people, including business, education, research, fine arts, and government. In fact many of their names and accomplishments are found in the textbooks of students across this country. Their contributions to our character and culture help make America a better place.

We also commend our friends in Israel as they celebrated the 54th anniversary of the founding of the modern State of Israel. This milestone is a tribute to the strength and resilience of the Jewish spirit in the face of great adversity. At this time, it is imperative that freedom loving people from around the world stand with the people of Israel in affirming Israel's right of existence and its right to defend itself against those who would use terror to achieve their goals.

I know my Senate colleagues will join with me and the millions of Americans to mark this special week to pay tribute to the countless people of Jewish faith and descent who have contributed so much to the definition of our nation and the world.●

CLINTON ADMINISTRATION ROADLESS POLICY: STILL AND ALWAYS A BAD IDEA

● Mr. CRAIG. Mr. President, I rise today to discuss the issue of roadless areas in our national forests and to discuss the manner in which the last administration developed their roadless area conservation rule. Recently, the OMB released a draft report on the costs and benefits of Federal regulations. In this report, the Clinton roadless rule is estimated at costing $164 million and saving only $219,000. I find these numbers outrageous and add this to the extensive list of reasons why this rule would hinder our rural economies. With this, I would like to again express my objections to the Clinton roadless rule and explain why I feel it is still a bad idea.

As chairman of the Subcommittee on Forests and Public Lands of the Energy and Natural Resource Committee I held a series of five hearings between November 1999 and March 2001 to examine the development and potential consequences of the Clinton administration's roadless area conservation rulemaking. Our hearing record details numerous questions about the process and data used to develop the roadless area conservation rule. While I will not recite the entire history of this controversy, I do want to highlight some of the key dates and events to help my colleagues better understand this issue.

To begin, the issue of roadless has been around for more than 30 years. In 1972, the Forest Service began Roadless Area Review and Evaluation One, RARE I, to examine how much land should be set aside and recommended for potential Wilderness.

A more comprehensive RARE II inventory was undertaken in 1982. That review examined a little more than 62 million acres. A variety of wilderness bills passed by Congress allocated 24 percent of the RARE II lands to Wilderness. The forest plans completed by the Forest Service between 1983 and 1998 recommended—10 percent of the 62 million acres for wilderness; 17 percent of the land for future wilderness study; 38 percent of the land for other multiple-uses that excludes timber harvesting; and 14 percent of the 62 million acres to be considered as potentially available for timber harvesting.

It is important to know that from the time RARE I was completed, through 1998, that less than 1.1 million acres of the original 62 million RARE II acres were utilized for timber harvesting. Thus, less than 2 percent of the entire 62 million acres had been entered, or would be entered in the next 5 years, for timber harvesting.

In 1998, after an Interior Appropriations vote on funding for Forest Service road construction, I invited then chief of the Forest Service Mike Dombeck to my office to discuss the roadless issue. I offered the chief my help in working to legislatively resolve this thorny issue. I was politely informed by Chief Dombeck that they would rather resolve the issue administratively.

In May of 1999, then Vice President Al Gore, during a speech to the League of Conservation Voters stated that not only would he eliminate all road building, but he would prohibit all timber harvesting in roadless areas. In effect he announced the selection of the final alternative for the Clinton roadless area conservation rule before the draft rulemaking had even begun.

On October 13, 1999, President Clinton, speaking at Reddish Knob, VA, directed the Forest Service to develop regulations to end road construction and to protect inventoried and uninventoried roadless areas across the National Forest System.

On October 19, 1999, the Forest Service published a notice of intent to prepare an environmental impact statement to propose protection of certain roadless areas.

In June of 2000, Chief Dombeck, in a letter to his employees on the roadless issue, stated that ''Collaboration does not alleviate our responsibility to make decisions that we believe are in the best long-term interests of the land or the people who depend on and enjoy it.'' Mr. Dombeck made it very clear to me that Mr. Gore's desires would be carried out.

In the 2000 State of the Union Address, nearly 11 months before the final roadless area conservation plan was published, President Clinton said that together, the Vice President and he had ''in the last three months alone helped preserve 40 million acres of roadless in the national forests.''

On November 13, 2000, the final EIS for the roadless rrea conservation plan was published. And on January 12, 2001 the final roadless area conservation rule was published in the Federal Register. This meant that over the Christmas holiday the agency read, absorbed and responded to more than 1.2 million public comments in a little less than 2 months.

The Public Lands and Forest Subcommittee hearings that were held, made it clear to me that the decision on what to do about the roadless issue was sealed on October 13, 1999 when the President spoke at Reddish Knob and the rest of this effort was little more than window dressing.

It was also no surprise to me when U.S. Federal District Court Judge Edward Lodge stayed the implementation of this rule in May of 2001. While Judge Lodge's stay has been appealed to the Ninth Circuit Court of Appeals, the fact remains that no administration, not the Bush administration, not the Clinton administration, nor any future administration can ignore Judge Lodge's ruling.

I know that many in the environmental community, proponents of the Roadless Rule, would like to convince us that the Bush administration is somehow skirting the law by refusing to fully implement the roadless area conservation rule. But, the simple fact is that Judge Lodge ENJOINED all aspects of the roadless area conservation rule.

Some have decried the fact that the Bush administration chose not to contest Judge Lodge's decision in the Ninth Circuit Court of Appeals. They claim this action by the Bush administration is an attempt to rollback a much-needed environmental rule. I think we would be wrong to draw this conclusion. The fact is that every administration faced with defending agency decisions in court examines each case on its merit and then decides which course of action is best for the government.

In April of 2001 the Washington Legal Foundation provided an analysis of the Clinton administration's failure to defend or appeal cases that went against its natural resource agencies during its 8 long years in office.

They found ''13 occasions when the Clinton administration refused to defend resource management decisions of its predecessors, choosing to accept an injunction or remand from a U.S. District Court rather than defend those decisions in a U.S. court of appeals.'' [There are] ''at least 28 other occasions, when the Clinton administration refused to defend its own resource management decisions in a court of appeals after receiving an injunction or remand from a U.S. district court.'' In the past, many of the last-minute rules promulgated by a variety of departments and agencies have been pulled-back and reviewed. We must realize that this is normal and rational behavior when the White House changes hands.

So when it came to the roadless area conservation rule, the Bush administration faced a rule that was rushed through the process, that impacted a tremendous amount of land and people, which had been, at least temporarily, struck down by the courts.

I want to shift gears here and help my colleagues better understand what makes this issue so contentious. Beyond the obvious questions of whether or not the process used to develop this rule was honest and fair, we have to remember that every rule and regulation any administration undertakes impacts individuals in some local community in our great country. As we have taken the time to learn more about how the Clinton roadless conservation rule was developed, it has become increasingly clear to me how rushed the process was and how completely the Forest Service failed to include a level of detail needed by local people to assess how the policy might affect them on an individual basis.

While one might be tempted to think the Forest Service was knowingly hiding the details of its proposal, I think we all must understand the enormity of the task they undertook. They had a policy that covered over 60 million acres of our Nation. The last time they attempted a similar policy, in RARE II, the environmentalists successfully sued and the courts found that the policy failed to examine the proposal at the local level and sent the Forest Service back to the drawing board.

Last summer, my staff took time to better understand why people are so upset over the roadless area conservation rule. We found nearly 43,500 acres of State lands within the RARE II roadless areas and more than 421,500 acres of privately owned lands within these areas. This is important because, like any neighborhood, how your neighbor manages his or her lands greatly impacts how and when you can manage your land.

If implemented, the roadless area conservation rule would convey a wilderness like management regime on these lands. Think about States that have one or more roadless areas that the Federal Government is managing as a quasi-wilderness.

Imagine for a moment that the State has a constitution that directs State lands be managed to produce revenue to pay for the operation and building of the schools in that State. Such as my home, the State of Idaho happens to have. Don't you think that the State will, in the face of this new roadless area conservation rule, experience a new public expectation that they will manage the State lands in a manner similar to the surrounding Forest Service roadless area.

Let me take this scenario just one more step. Imagine that when Sally and Joe come to Idaho to visit the Panhandle National Forest to hike in the wilderness and roadless areas on that forest. They have absolutely no idea, nor do they care, that the State of Idaho has State lands in the Panhandle National Forest that are surrounded by Roadless lands. They have no idea, nor do they care, that the State of Idaho by law must manage those lands to generate a revenue stream to support its educational system. They arrive in the area knowing they are going into a roadless area where no timber harvesting, or mining, or any other activities are allowed, and they stumble upon a timber harvesting operation on State lands. Most likely they don't even take the time to find out who's land they are looking at. And why should they, they came to the Panhandle National Forest to hike in the wilderness.

If they are like most Americans they don't know that national forests have a different set of rules than National Parks. Then we are off to the races. They go home to New Jersey or California knowing in their hearts that the U.S. Forest Service is carrying out a secret timber sale program to circumvent the hard fought roadless area conservation rule that they have read so much about in their monthly Sierra Club magazine.

They then mount a campaign to end all commodity management on any lands within the bounds of roadless areas, no matter who owns those lands and no matter what the legitimate goals of that State or private landowner might be.

If a local government were going to change the zoning around your home and failed to notify you of the change or what it might mean, I imagine you would be skeptical about the process used to develop the zoning rule. This is no different. The Forest Service developed this rule in a very compressed time frame, with little or no description of the potential impacts of the rule at the local level. As a result a number of local communities and States became so upset that they have gone to court to get this rule overturned. To date there are at least nine cases that have been brought to challenge the Clinton administration's roadless area conservation rule.

I want to finish up with a series of examples of the types of land and infrastructure we have found in some of the national forest roadless areas that we examined. Interestingly, we found little or no evidence in the Forest Service EIS to suggest that State, private, and other Federal landowners were notified by either national or local Forest Service officials that this policy could affect the National Forests that surround their lands.

Our staff analysis found some very disturbing information. For instance, on the Boise National Forest we found five roadless areas with forest development roads within them. We also found a fire tower and an FAA radar site in a RARE II roadless area, and as a result road maintenance and reconstruction will no longer be allowed.

On the Panhandle National Forest in Idaho, we found 13 roadless areas with National Forest System Roads within them, along with at least three mines, one Forest Service campground and one power line in one or more of the roadless areas.

On the Superior National Forest in the State of Minnesota, we found three roadless areas with National Forest System roads in them, along with four public boat ramps, three Forest Service campgrounds, and one mine in the roadless areas.

On the Chequamegon-Nicolet National Forests in northern Wisconsin we found 1,317 acres of private land and 2,886 acres of State lands within the RARE II roadless areas.

On the Monongahela National Forest in West Virginia we found 10 RARE II roadless areas that contain national forest system roads, along with a pipeline and parts of a railroad right-of-way within the roadless areas. One roadless area that we examined was made up of 75 percent private property.

On the Dixie National Forest in the State of Utah we found 14 RARE II roadless areas with national forest system roads within them, as well as one reservoir and one water pipeline in a roadless area.

On the Gila National Forest, in the State of New Mexico, 11 of the RARE II roadless areas on that forest have national forest system roads within them, as well as one that had a water pipeline within it.

I will finish with the Pisgah National Forest in North Carolina, where we found five areas with one or more national forest system roads within them, and one roadless area with a Federal Aviation Agency, FAA, microwave tower site in it.

The point of going through this litany is to help my Senate colleagues better understand why national policy, such as this, can be better developed at the local level, and to help put Judge Edward Lodge's decision, to stay the implementation of this wrongheaded rule, in a better context.

We can, and will, continue to argue over the environmental policies of this

country in this body. There is room in this debate for opposing views. But in the case of the environmentalist concerns on the Bush administrations new look at the roadless area conservation rule and their efforts to gain political support to ignore the courts on this issue, I would hope that none of us would want this, or any future administration to ignore decisions made by the Federal courts.

In closing, I applaud the efforts undertaken by this administration to take a careful look at this wrongheaded rule. I hope they listen to Judge Lodge and any other court rulings that result from the other cases. I am happy to see that the new chief of the Forest Service is more sensitive to local communities and the private and State landowners who will be affected by this or any new roadless area policy.●

87TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

● Mr. JOHNSON. Mr. President, tomorrow marks the 87th anniversary of the start of the Armenian genocide, and I rise today to honor the victims of this horrific event.

As we take time to reflect on this dark chapter of world history, I am not sure what is more troubling: The fact that so many people no longer remember the Armenian genocide, or that there are still people who deny it ever took place. To those who would deny it, I refer them to the U.S. National Archives which contains thousands of pages of source material proving the Armenian genocide did occur. To those who no longer remember, we must tell the story or face the possibility that history may repeat itself.

On April 24, 1915, approximately 200 Armenian religious, political, and intellectual leaders were arrested in Constantinople and subsequently killed. Shortly afterward, the entire Armenian people were forcibly removed from their homeland in present-day eastern Turkey and deported. Over a million and a half Armenians were killed or died as a result of the deportation between 1915 and 1923, and another 500,000 were forced into exile. All told, one-third of the Armenian population was killed during this brutal episode.

Despite having their population decimated and scattered into exile, the Armenian people have been able to maintain a rich culture and a strong sense of their own history. They should be proud of their many accomplishments in the nearly nine decades since the genocide. It is with this strong sense of the past that the Armenian people today are building a brighter future.

As we know all too well, the Armenian genocide was the first, but not the last, genocide of the 20th Century. We join with the Armenian people to remember the victims and to keep alive the memory to ensure such a tragic event never occurs again.●

PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO SIGNIFICANT NARCOTICS TRAFFICKERS CENTERED IN COLOMBIA—PM 81

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c) and 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a 6-month periodic report that my Administration has prepared on the national emergency with respect to significant narcotics traffickers centered in Colombia that was declared in Executive Order 12978 of October 21, 1995.

GEORGE BUSH.

THE WHITE HOUSE, *April 23, 2002*.

MESSAGE FROM THE HOUSE

At 3:28 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to 15 U.S.C. 1024(a), the Speaker appoints the following Member of the House of Representatives to the Joint Economic Committee: Mr. HILL of Indiana.

The message also announced that pursuant to section 801 of title 2 of the United States Code, the minority leader appoints the following Members to the Congressional Recognition for Excellence in Arts Education Awards Board: Mr. HINCHEY of New York and Ms. MCCOLLUM of Minnesota.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–6554. A communication from the Acting Assistant General Counsel for Regulatory Services, Office of Educational Research and Improvement, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Program of Research on Reading Comprehension—Notice of Final Priority'' received on April 17, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–6555. A communication from the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities'' (RIN1115-AG67) received on April 17, 2002; to the Committee on the Judiciary.

EC–6556. A communication from the Secretary of Health and Human Services and the Attorney General, transmitting jointly, pursuant to law, the fifth Annual Report on the Health Care Fraud and Abuse Control Program for Fiscal Year 2001; to the Committee on Finance.

EC–6557. A communication from the Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled ''Risk-Based Capital Standards: Claims on Securities Firms'' (12 CFR Part 3) received on April 17, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–6558. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Procedures for Compensation of Air Carriers'' ((RIN2105–AD06)(2002–0002)) received on April 16, 2002; to the Committee on Commerce, Science, and Transportation.

EC–6559. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Sodium Starch Glycolate; Exemption from the Requirement of a Tolerance'' (FRL6833–9) received on April 18, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6560. A communication from the Administrator, Livestock and Seed Program, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Lamb Promotion, Research and Information Order'' ((Doc. No. LS–01–12)(RIN0581–AC06)) received on April 17, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6561. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled ''Cuban Immigration Policies''; to the Committee on Foreign Relations.

EC–6562. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, Presidential Determination Number 2002–14, relative to Palestine Liberation Organization; to the Committee on Foreign Relations.

EC–6563. A communication from the Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the San Bernardino Kangaroo Rat'' (RIN1018–AH07) received on April 17, 2002; to the Committee on Environment and Public Works.

EC–6564. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Missouri'' (FRL7175–3) received on April 18, 2002; to the Committee on Environment and Public Works.

EC–6565. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions'' (FRL7173–7) received on April 18, 2002; to the Committee on Environment and Public Works.

EC–6566. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination that State has Corrected the Rule Deficiencies and Stay of Sanction in California, San Joaquin Valley Unified Air Pollution Control District'' (FRL7174–2) received on April 18, 2002; to the Committee on Environment and Public Works.

EC–6567. A communication from the Principal Deputy Associate Administrator of the

Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District'' (FRL7158–4) received on April 18, 2002; to the Committee on Environment and Public Works.

EC–6568. A communication from the Vice President for Legal Affairs, General Counsel and Corporate Secretary, Legal Services Corporation, transmitting jointly, pursuant to law, the Corporation's report under the Government in the Sunshine Act for calendar year 2001; to the Committee on Governmental Affairs.

EC–6569. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the Commission's Performance Report for Fiscal Years 1999–2001; to the Committee on Governmental Affairs.

EC–6570. A communication from the Administrator, General Service Administration, transmitting, the Administrations Strategic Plan dated April 3, 2002; to the Committee on Governmental Affairs.

EC–6571. A communication from the Administrator, General Service Administration, transmitting, pursuant to law, the Annual Performance Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

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. MURKOWSKI:

S. 2222. A bill to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2223. A bill to provide for the duty-free entry of certain tramway cars for use by the city of Portland, Oregon; to the Committee on Finance.

By Mr. LEAHY:

S. 2224. A bill to repeal the Antidumping Act of 1916; to the Committee on Finance.

By Mr. LEVIN (for himself and Mr. MURKOWSKI) (by request):

S. 2225. A bill to authorize appropriations for fiscal year 2003 for military activities of Department of Defense, to prescribe military personnel strengths for fiscal year 2003, and for other purposes; to the Committee on Armed Services.

By Mr. WELLSTONE:

S. 2226. A bill to require States to permit individuals to register to vote in an election for Federal office on the date of the election; to the Committee on Rules and Administration.

By Mr. ROCKEFELLER:

S. 2227. A bill to clarify the effective date of the modification of treatment for retirement annuity purposes of part-time services before April 7, 1986, of certain Department of Veterans Affairs health-care professionals; to the Committee on Veterans' Affairs.

By Mr. ROCKEFELLER:

S. 2228. A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to operate up to 15 centers for mental illness research, education, and clinical activities; to the Committee on Veterans' Affairs.

By Mr. ROCKEFELLER (by request):

S. 2229. A bill to amend title 38, United States Code, to authorize a cost-of-living increase in rates of disability compensation and dependency and indemnity compensation, and to revise the requirement for maintaining levels of extended-care services to veterans; to the Committee on Veterans' Affairs.

By Mr. SPECTER (for himself and Mr. ROCKEFELLER):

S. 2230. A bill to amend title 38, United States Code, to make permanent the authority of the Secretary of Veterans Affairs to guarantee adjustable rate mortgages, to authorize the guarantee of hybrid adjustable rate mortgages, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. SPECTER (for himself and Mr. ROCKEFELLER):

S. 2231. A bill to amend title 38, United States Code, to provide an incremental increase in amounts of educational assistance for survivors and dependents of veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. DAYTON:

S. 2232. A bill to amend title XVIII of the Social Security Act to establish a program to provide for medicate reimbursement for health care services provided to certain medicare-eligible veterans in facilities of the Department of Veterans Affairs; to the Committee on Finance.

By Mr. THOMAS (for himself, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. SPECTER, Mrs. CARNAHAN, Ms. SNOWE, and Mr. CLELAND):

S. 2233. A bill to amend title XVIII of the Social Security Act to establish a medicare subvention demonstration project for veterans; to the Committee on Finance.

By Mrs. BOXER:

S. 2234. A bill to amend the Public Health Service Act to provide for expanding, intensifying, and coordinating activities of the Office on Women's Health in the Department of Health and Human Services with respect to autoimmune disease in women; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORZINE:

S. Res. 248. A resolution concerning the rise of anti-Semitism in Europe; to the Committee on Foreign Relations.

By Mr. HATCH:

S. Res. 249. A resolution designating April 30, 2002, as ''Dia de los Ninos: Celebrating Young Americans'', and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. Res. 250. A resolution extending sympathy and condolences to the families of the Canadian Soldiers who were killed and the Canadian soldiers who were wounded on April 18, 2002, in Afghanistan, and to all of the Canadian people; considered and agreed to.

By Mr. LOTT:

S. Res. 251. A resolution making Minority party appointments for the Committees on Environment and Public Works and Governmental Affairs for the 107th Congress; considered and agreed to.

By Mr. DODD:

S. Con. Res. 102. A concurrent resolution proclaiming the week of May 14 through May 11, 2002, as ''National Safe Kids Week''; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 525

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of S. 525, a bill to expand trade benefits to certain Andean countries, and for other purposes.

S. 659

At the request of Mr. CRAPO, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 659, a bill to amend title XVIII of the Social Security Act to adjust the labor costs relating to items and services furnished in a geographically reclassified hospital for which reimbursement under the medicare program is provided on a prospective basis.

S. 812

At the request of Mr. SCHUMER, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Missouri (Mrs. CARNAHAN), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

S. 999

At the request of Mr. BINGAMAN, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1248

At the request of Mr. KERRY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1248, a bill to establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable, housing for low-income families, and for other purposes.

S. 1339

At the request of Mr. CAMPBELL, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1549

At the request of Mr. LIEBERMAN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1549, a bill to provide for increasing the technically trained workforce in the United States.

S. 1616

At the request of Mr. TORRICELLI, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1616, a bill to provide for interest on late payments of health care claims.

S. 1683

At the request of Mr. HARKIN, the name of the Senator from Illinois (Mr.

FITZGERALD) was added as a cosponsor of S. 1683, a bill to amend the Emergency Food Assistance Act of 1983 to permit States to use administrative funds to pay costs relating to the processing, transporting, and distributing to eligible recipient agencies of donated wild game.

S. 1686

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1686, a bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the medicare program.

S. 1934

At the request of Ms. MIKULSKI, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1934, a bill to amend the Law Enforcement Pay Equity Act of 2000 to permit certain annuitants of the retirement programs of the United States Park Police and United States Secret Service Uniformed Division to receive the adjustments in pension benefits to which such annuitants would otherwise be entitled as a result of the conversion of members of the United Stats Park Police and United States Secret Service Uniformed Division to a new salary schedule under the amendments made by such Act.

S. 1945

At the request of Mr. JOHNSON, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1945, a bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes.

S. 1992

At the request of Mrs. MURRAY, the name of the Senator from Maine (Ms. SNOWE) was withdrawn as a cosponsor of S. 1992, a bill to amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes.

S. 2026

At the request of Mr. LUGAR, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 2026, a bill to authorize the use of Cooperative Threat Reduction funds for projects and activities to address proliferation threats outside the states of the former Soviet Union, and for other purposes.

S. 2051

At the request of Mr. REID, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2051, a bill to remove a condition preventing authority for concurrent receipt of military retired pay and veterans' disability compensation from taking affect, and for other purposes.

S. 2053

At the request of Mr. FRIST, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2053, a bill to amend the Public Health Service Act to improve immunization rates by increasing the distribution of vaccines and improving and clarifying the vaccine injury compensation program, and for other purposes.

S. 2187

At the request of Mr. ROCKEFELLER, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2187, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish health care during a major disaster or medical emergency, and for other purposes.

S. 2189

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2189, a bill to amend the Trade Act of 1974 to remedy certain effects of injurious steel imports by protecting benefits of steel industry retirees and encouraging the strengthening of the American steel industry.

S. 2194

At the request of Mrs. CARNAHAN, her name was added as a cosponsor of S. 2194, a bill to hold accountable the Palestine Liberation Organization and the Palestinian Authority, and for other purposes.

At the request of Mrs. FEINSTEIN, the names of the Senator from Florida (Mr. NELSON) and the Senator from Alaska (Mr. MURKOWSKI) were added as cosponsors of S. 2194, supra.

S. 2200

At the request of Mr. BAUCUS, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 2200, a bill to amend the Ineternal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2201

At the request of Mr. HOLLINGS, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2201, a bill to protect the online privacy of individuals who use the Internet.

S. 2215

At the request of Mrs. CARNAHAN, her name was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

At the request of Mrs. BOXER, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2215, supra.

S. RES. 246

At the request of Mr. CAMPBELL, the names of the Senator from North Carolina (Mr. HELMS) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. Res. 246, a resolution demanding the return of the USS *Pueblo* to the United States Navy.

S. RES. 247

At the request of Ms. STABENOW, her name was added as a cosponsor of S. Res. 247, a resolution expressing solidarity with Israel in its fight against terrorism.

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mrs. CARNAHAN, her name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. LIEBERMAN, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Florida (Mr. GRAHAM), the Senator from Arizona (Mr. KYL), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Michigan (Mr. LEVIN), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. Res. 247, supra.

S. CON. RES. 84

At the request of Mr. SCHUMER, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. Con. Res. 84, a concurrent resolution providing for a joint session of Congress to be held in New York City, New York.

AMENDMENT NO. 3140

At the request of Mr. NELSON of Nebraska, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of amendment No. 3140 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3258

At the request of Mr. FITZGERALD, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of amendment No. 3258 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 2222. A bill to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I rise today to introduce legislation that will address an equity issue for one of Alaska'a rural village corporations.

Cape Fox Corporation is an Alaska Village Corporation organized pursuant to the Alaska Native Claims Settlement Act, ANCSA, by the Native Village of Saxman, near Ketchikan, AK. As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under Section 16 of ANCSA. However, unlike other village corporations, Cape Fox was further restricted from selecting lands within six miles of the boundary of the home rule City of Ketchikan. All other ANCSA corporations were restricted from selecting within two miles of such a home rule city.

The six mile restriction went beyond protecting Ketchikan's watershed and damaged Cape Fox by preventing the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed. As a result of the six mile restriction, only the mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no economic value, was available for selection by the corporation. Under ANCSA, however, Cape Fox was required to select this parcel.

Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

Clearly, Cape Fox was placed on unequal economic footing relative to other village corporations in Southeast Alaska. Despite its best efforts during the years since ANCSA was signed into law, Cape Fox has been unable to overcome the disadvantage the law built into its land selection opportunities by this inequitable treatment.

To address the inequity, I have introduced the ''Cape Fox Land Entitlement Adjustment Act of 2002.'' This bill will address the Cape Fox problem by providing three interrelated remedies.

1. The obligation of Cape Fox to select and seek conveyance of the approximately 160 acres of unusable land in the mountainous northeast corner of Cape Fox's core township will be annulled.

2. Cape Fox will be allowed to select and the Secretary of Agriculture will be directed to convey 99 acres of timber land adjacent to Cape Fox's current holdings on Revilla Island.

3. Cape Fox and the Secretary of Agriculture will be authorized to enter into an equal value exchange of lands in southeast Alaska that will be of mutual benefit to the Corporation and the U.S. Forest Service. Lands conveyed to Cape Fox in this exchange will not be timberlands, but will be associated with a mining property containing existing Federal mining claims, some of which are patented. Lands anticipated to be returned to Forest Service ownership will be of wildlife habitat value and will consolidate Forest Service holdings in the George Inlet area of Revilla Island. The Forest Service supports the transfer of these lands back to Federal ownership.

The land exchange provisions of this bill will help rectify the long-standing inequities associated with restrictions placed on Cape Fox in ANCSA. It will help allow this Native village corporation to make the transition from its major dependence on timber harvest to a more diversified portfolio of income-producing lands.

The bill also provides for the resolution of a long-standing land ownership problem within the Tongass National Forest. The predominant private landowner in the region, Sealaska Corporation, holds the subsurface estate on several thousand acres of National Forest System lands. This split estate poses a management problem which the Forest Service has long sought to resolve. Efforts to address this issue go back more than a decade. Provisions in the Cape Fox Land Entitlement Adjustment Act of 2002 will allow the agency to consolidate its surface and subsurface estate and greatly enhance its management effectiveness and efficiency in the Tongass National Forest.

I urge my colleagues to support this important legislation.

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2223. A bill to provide for the duty-free entry of certain tramway cars for use by the city of Portland, Oregon; to the Committee on Finance.

Mr. WYDEN. Mr. President, I rise today to introduce legislation to extend an import duty suspension for the Central City Streetcar in the City of Portland, OR. The City of Portland purchases the streetcars from a manufacturer in the Czech Republic. Previous streetcar shipments were duty-free under legislation granting special status to the exporting nation, the Czech Republic. The City has ordered two new streetcars which will be shipped on May 1, 2002. However, that duty-free exemption has expired, adding $130,000 to the price of these streetcars. This legislation will provide duty-free entry for those two streetcars ordered by the City of Portland, thus saving the City of Portland $130,000.

I am pleased to be joined by my colleague from Oregon, Senator SMITH, in introducing this bipartisan legislation to provide this duty suspension for the City of Portland's Central City Streetcar. I urge all my colleagues to support this legislation.

By Mr. ROCKEFELLER:

S. 2227. A bill to clarify the effective date of the modification of treatment for retirement annuity purposes of part-time services before April 7, 1986, of certain Department of Veterans Affairs health-care professionals; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, I introduce legislation today to fix a long-standing inequity.

Last December, Congress passed the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. Enacted as Public Law 107–135, this legislation gave VA several tools to respond to the looming nurse crisis. In addition, it altered how part-time service performed by certain title 38 employees would be considered when granting retirement credit.

Previously, the law required that title 38 employees' part-time services prior to April 7, 1986, be prorated when calculating retirement annuities, resulting in lower annuities for these employees. Section 132 of the VA Health Programs Enhancement Act was intended to exempt all previously retired registered nurses, physician assistants, and expanded-function dental auxiliaries from this requirement. However, the Office of Personnel Management has interpreted this provision to only apply to those health care professionals who retire after its enactment date.

The legislation I introduce today would require OPM to comply with the original intent of the VA Health Programs Enhancement Act, and therefore to recalculate the annuities for these retired health care professionals. This clarification would not extend retirement benefits retroactively to the date of retirement, but would ensure that annuities are calculated fairly from now on for eligible employees who retired between April 7, 1986, and January 23, 2002.

I ask my colleagues to join me in restoring our original legislative intent to this issue of fairness for retired VA health care professionals, and 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. 2227

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

SECTION 1. EFFECTIVE DATE OF MODIFICATION OF TREATMENT FOR RETIREMENT ANNUITY PURPOSES OF CERTAIN PART-TIME SERVICE OF CERTAIN DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PROFESSIONALS.

(a) EFFECTIVE DATE.—The effective date of the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 (Public Law 107–135; 115 Stat. 2454) shall be as follows:

(1) January 23, 2002, in the case of health care professionals referred to in subsection (c) of section 7426 of title 38, United States Code (as so amended), who retire on or after that date.

(2) The date of the enactment of this Act, in the case of health care professionals referred to in such subsection (c) who retired before January 23, 2002, but after April 7, 1986.

(b) RECOMPUTATION OF ANNUITY.—The Office of Personnel Management shall recompute the annuity of each health-care professional described in the first sentence of subsection (c) of section 7426 of title 38, United States Code (as so amended), who retired before January 23, 2002, but after April 7, 1986,

in order to take into account the amendment made by section 132 of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. Such recomputation shall be effective only with respect to annuities paid after the date of the enactment of this Act, and shall apply beginning the first day of the first month beginning after the date of the enactment of this Act.

By Mr. ROCKEFELLER:

S. 2228. A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to operate up to 15 centers for mental illness research, education, and clinical activities; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, I introduce legislation today to allow researchers and clinicians in the Department of Veterans Affairs to establish up to ten more centers to study and treat mental illnesses.

Historically, as many as one-third of veterans seeking care at VA have received mental health treatment, and research suggests that serious mental illnesses affect at least one-fifth of veterans who use the VA health care system. About 450,000 of the approximately 2.3 million veterans who receive compensation from VA have service-connected psychiatric and neurological disorders. These statistics do not reflect problems that affect veterans alone: in 1999, the Surgeon General of the United States reported that mental disorders account for more than 15 percent of the overall burden of disease from all causes, slightly more than all forms of cancer. Major depression alone ranked second only to heart disease in impact.

In 1996, Congress authorized VA to establish five centers dedicated to mental illness research, education, and clinical activities. These Mental Illness Research, Education, and Clinical Centers, called ''MIRECCs'' by VA, integrate basic and clinical research with a training mission that allows VA to translate new findings into improved patient care. Research undertaken within these centers has helped to increase our fundamental understanding of mental illnesses, and has given VA caregivers more and better tools to treat patients with mental disorders so they can function more easily within their communities.

Because they have proved so effective at fostering scientific, clinical, and educational improvements in mental health care, I have introduced legislation today that would allow VA to expand the number of these centers from the five authorized programs to a possible total of fifteen. Based on the programs' success, VA researchers have already started three more centers, expanding the number of existing programs to eight, and have demonstrated their willingness to open more in the near future. I urge my colleagues to join me in supporting the expansion of this program, which benefits not only veterans but the entire mental health care community.

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. 2228

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

SECTION 1. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO OPERATE ADDITIONAL CENTERS FOR MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES.

Section 7320(b)(3) of title 38, United States Code, is amended by striking ''five centers'' and inserting ''15 centers''.

By Mr. ROCKEFELLER (by request):

S. 2229. A bill to amend title 38, United States Code, to authorize a cost-of-living increase in rates of disability compensation and dependency and indemnity compensation, and to revise the requirement for maintaining levels of extended-care services to veterans; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, today I introduce legislation requested by the Secretary of Veterans Affairs, as a courtesy to the Secretary and the Department of Veterans Affairs, VA. Except in unusual circumstances, it is my practice to introduce legislation requested by the Administration so that such measures will be available for review and consideration.

This ''by-request'' bill contains two sections. The first would authorize the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans, and for the dependent survivors of veterans whose deaths were service-related, beginning this December. The rate of increase, as requested by VA in its proposed budget for FY 2003, would be the same as the cost-of-living adjustment provided under current law to veterans' pension and Social Security recipients.

The second section of this bill would allow VA to change the way that it calculates the number of veterans receiving VA long-term care. In 1999, Congress passed the Veterans Millennium Health Care Benefits Act, which required VA to maintain the level of extended care services offered to veterans at the 1998 level. VA has argued that this law, based on the average daily census in VA-operated nursing homes, unfairly ignores care provided through contracts with private nursing homes and by VA-subsidized State nursing homes. The requested bill would amend the law to include nursing home care furnished by community providers and State veterans homes when determining whether VA has maintained extended care services at the mandated 1998 level.

I ask unanimous consent that the text of the bill and Secretary Principi's transmittal letter that accompanied the draft legislation be printed in the RECORD.

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

S. 2229

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

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Benefits Improvement Act of 2002''.

(b) REFERENCES.—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 title 38, United States Code.

TITLE I—INCREASE IN COMPENSATION RATES AND LIMITATIONS

SEC. 101. INCREASE IN COMPENSATION RATES AND LIMITATIONS.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2002, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation (DIC) by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—The dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—The dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—The dollar amounts in effect under paragraph (3) of section 1311(a) of such title.

(b) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2002.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2002, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 101 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(e) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made

under section 215(i) of such Act during fiscal year 2003, the Secretary shall publish in the Federal Register the amounts specified in subsection (b) as increased under this section.

TITLE II—HEALTH MATTERS

SEC. 201. NURSING HOME STAFFING LEVELS.

Section 1710B(b) is amended to read as follows:

''(b)(1) The Secretary shall ensure that the staffing and level of extended care services, excluding nursing home care, provided by the Secretary nationally in facilities of the Department during any fiscal year is not less than the staffing and level of such services provided nationally in facilities of the Department during fiscal year 1998.

''(2) The Secretary shall ensure that the average daily census in nursing homes over which the Secretary has direct jurisdiction, plus the average daily census of veterans placed by the Secretary in community nursing homes pursuant to a contract, plus the average daily census of veterans for which the Secretary pays per diem to States for nursing home care in a State nursing home, is not less in total than in fiscal year 1998.''.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, April 18, 2002.

Hon. RICHARD B. CHENEY,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a draft bill containing two very important components of the President's FY 2003 budget request for the Department of Veterans Affairs: legislation to (1) authorize a cost of living increase in rates of disability compensation and dependency and indemnity compensation, and (2) revise the requirement for maintaining levels of extended-care services to veterans. I request that this bill be referred to the appropriate committee for prompt consideration and enactment.

Section 101 of the draft bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of dependency and indemnity compensation (DIC) for the survivors of veterans whose deaths are service related, effective December 1, 2002. As provided in the President's FY 2003 budget request, the rate of increase would be the same as the cost-of-living adjustment (COLA) that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 1.8 percent.

We estimate that enactment of this section would cost $279 million during FY 2003, $1.66 billion over the period FY 2003–2007 and $3.45 billion over the period FY 2003–2012. Although this section is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA), the PAYGO effect would be zero because OBRA requires that the full compensation COLA be assumed in the baseline. We believe this proposed COLA is necessary and appropriate in order to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

Section 201 of the draft bill would amend section 1710B(b) of title 38, United States Code, to revise the statutory requirement that the Secretary continue to provide veterans with extended care services at 1998 levels. Current law, established in the 1999 Veterans Millennium and Health Care Benefits Act, requires VA to maintain the staffing and level of extended care services provided by the Department nationally in facilities of the Department at levels not less than the staffing and level of such services provided nationally during FY 1998. We propose to amend the law as it applies to nursing home care to allow VA to also count nursing home care VA procures in the community, and supports in State nursing homes, when determining whether the Department is maintaining its level of effort in providing such care.

For more than 30 years, VA has provided veterans with nursing home care through contracts with private sector nursing homes and by paying states per diem for nursing home care furnished in State nursing homes. Of the total amount of VA-supported nursing home care in FY 2000, VA furnished approximately thirty-eight percent directly in VA-operated, nursing homes. VA supported approximately twelve percent through contracts with private nursing homes, and fifty percent through care furnished in State nursing homes.

VA also provides up to sixty-five percent of the cost of construction of State nursing homes. That has encouraged the expansion of the State Home Program to the point that there are currently 108 such homes nationwide. The availability of the State Home Program and the contract program has improved veterans' access to nursing home care, and has provided veterans with greater choice to meet both clinical needs and preferences of placement near family. We believe it is appropriate and these two sources of nursing home care be counted when assessing the effort VA puts into nursing home care.

Increasing the FY 2002 average daily census in VA nursing homes to 1998 levels would require us to divert to that program large amount of funds VA currently devotes to other health-care purposes, including payments for community nursing-home care, and grants to construct State nursing homes. However, as stated above, the community and State nursing home programs enable VA to offer veterans both choice and access to care closer to loved ones, values that VA does not want to jeopardize. Using other extended care funds to immediately move to achieve 1998 levels could jeopardize the excellent mix of those other services that VA now offers. The Department now provides veterans a balanced program of extended care services that best meets their needs. It would greatly disserve veterans to dramatically shift funding to meet the strictures of the current requirement for provision of care in VA-operated nursing homes, particularly when the cost of contract nursing homes care is significantly less than the cost of providing care in VA facilities.

Enactment of our proposal would permit us to continue the overall FY 1998 level of effort for this care as measured by average daily census, without the need to divert an estimated $161.2 million by the end of FY 2004 from resources which would otherwise be available to meet other critical health-care needs.

We are advised by the Office of Management and Budget that there is no objection to the transmittal of this draft bill to the Congress and its enactment would be in accord with the program of the President.

Sincerely yours,

ANTHONY J. PRINCIPI.

By Mr. SPECTER (for himself and Mr. ROCKEFELLER):

S. 2230. A bill to amend title 38, United States Code, to make permanent the authority of the Secretary of Veterans Affairs to guarantee adjustable rate mortgages, to authorize the guarantee of hybrid adjustable rate mortgages, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition today to comment briefly on legislation I am introducing which will help many veterans achieve the dream of home ownership. The legislation would permit the Department of Veterans Affairs, VA, to guarantee adjustable rate mortgage, ARM, loans as part of its loan guaranty program. The legislation would also give VA the authority to guarantee a relatively new type of ARM financing, ''hybird'' ARM loans. Hybrid ARM's provide a fixed rate of interest during the first three to ten years of the loan, and an annual interest rate adjustment thereafter. Both conventional ARM's and hybrid ARM's would expand the financing options available to veterans, options which are currently available under Federal Housing Administration, FHA, insured loan programs for non-veterans.

The VA loan guaranty benefit has helped millions of active duty service members and veterans to purchase homes without a down payment. VA currently provides a guaranty only on loans applying a fixed rate of interest over a thirty year period, so-called ''30-year conventional'' loans. While a 30-year conventional loan makes sense for some home buyers, it does not provide the flexibility others need given differing personal circumstances. ARM loans and hybrid ARM loans provide that flexibility.

Traditional ARM and hybrid ARM loans provide flexibility by offering lower rates of interest during an initial period, one year for traditional ARM's and three, five, seven, or ten years for hybrid ARM's, as compared to 30-year conventional rates. Lower rates translate into lower monthly payments, often making a home more affordable and permitting home buyers to qualify for loans. In addition, hybrid ARM's have another attractive aspect in that they provide the security of a lower interest rate for a fixed number of years prior to the annual adjustment period. Service members and veterans who know beforehand they will be moving out of their homes in a set number of years may find hybrid ARM's make financial sense given their circumstances. While home buyers must be prudent in choosing to use ARM financing, foreclosing the option to veterans, in my estimation, smacks of paternalism. ARM loans are insured by FHA; my legislation would simply apply to the VA loan guaranty program a principle already embraced by FHA and the commercial lending sector: one type of financing does not meet all home buyer needs.

This bill would also extend certain protections to veterans who use ARM financing. During an annual interest rate adjustment period, rates would not be permitted to increase more than one percent. Further, interest rates would not be permitted to exceed more than five percentage points above the initial fixed rate. These are standards that have evolved in the marketplace over the past 20 years; veterans, like other home purchasers, should gain the benefit of these protections

The VA supports the addition of an ARM option to its loan guaranty program. It administered a successful, and popular, ARM pilot program in the mid 1990's; the program was so popular that ARM's constituted up to 21 percent in 1995, of VA-guaranteed home loans. Unfortunately,the program was not reauthorized by Congress. The time has arrived to rectify that oversight. I ask my colleagues for their support.

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. 2230

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

SECTION 1. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.

(a) PERMANENT AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 of title 38, United States Code, is amended to read as follows:

''(a) The Secretary may guarantee adjustable rate mortgages for veterans eligible for housing loan benefits under this chapter.''.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking ''Interest rate adjustment provisions'' and inserting ''Except as provided in subsection (c)(1), interest rate adjustment provisions'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

''(c) Adjustable rate mortgages that may be guaranteed under this section include adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

''(1) are not subject to subsection (b)(1);

''(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

''(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

''(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b).''.

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs may exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

By Mr. SPECTER (for himself and Mr. ROCKEFELLER):

S. 2231. A bill to amend title 38, United States Code, to provide an incremental increase in amounts of educational assistance for survivors and dependents of veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on legislation I have introduced today which would increase educational assistance benefits for two highly worthy groups: survivors of service members who were killed on active duty or who died after service as consequence of service-related disabilities; and immediate family members of veterans who survived service but who are living with permanent and total disabilities.

No one can doubt that spouses and children of service-deceased members of the armed forces are worthy of our Nation's gratitude. No less worthy are those whose veteran-spouse returned from service in a profoundly disabled state and, in many cases, later died as a direct result of that same disability. It is entirely proper that the Nation provide these worthy people with sufficient educational assistance benefits to offset the loss of support that would have been provided by the veteran but for his or her service-related wounds.

The legislation I introduce today would increase the rate of monthly Survivors' and Dependents' Education Assistance, DEA, benefits from $670 to $985. The increase would be phased in over a two-year period, and would reflect the same phased-in increase provided to veterans eligible for Montgomery GI Bill, MGIB, benefits under Public Law 107–103, the recently-enacted ''Veterans Education and Benefits Expansion Act of 2001.'' Under my bill, DEA benefits would first increase from $670 to $900 per month on October 1, 2002, and to $985 per month on October 1, 2003. In addition, the legislation would equalize with MGIB benefits the number of months, at 36, an eligible person would be allowed to use his or her benefit.

This legislation would create parity between DEA and MGIB monthly benefits as recommended by a recent Department of Veterans Affairs, VA, program evaluation. Both programs would provide an aggregate of $35,460 worth of education benefits. Thus, both veterans and survivors would have the resources necessary to meet the average cost of tuition, fees, room, and board at four-year, public institutions of higher learning. As was stated by VA's Deputy Secretary, Dr. Leo Mackay, in connection with a Committee on Veterans Affairs hearing on June 28, 2001, VA ''believe[s] it is only fair that these benefits should be at the same level as those provided to veterans.'' VA estimates that a monthly benefit at that level will entice 90% of eligible persons to use the benefit.

In addition to increasing DEA benefits, the legislation I have introduced today would provide a $4 million funding increase for State Approving Agencies, SAA, State educational program certifying offices which are funded by VA grants. These offices protect the integrity of VA educational assistance and job-training programs and protect veterans and survivors, and, not unimportantly, taxpayers, from fraudulent ''providers'' of education and training opportunities. Since 1989, funding for SAAs has been nearly flat, but SAA responsibilities have grown. Most recently, Public Law 107–103 tasked the SAAs with veteran and servicemember outreach in each state, and expanded the scope of education programs which SAAs must review and approve. My legislation would provide an increase, from $14 million to $18 million in fiscal year 2003, to address the loss of purchasing power absorbed by SAAs over the last decade, and to adequately fund the additional responsibilities SAAs have been given.

I hope there will be unanimous support for this legislation. Our troops in Afghanistan and elsewhere need to know that if they die or are seriously injured on the battlefield, their loved ones will be cared for. This legislation will assure that survivors' needs in the critical area of education will be met.

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. 2231

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 ''Survivors' and Dependents' Educational Assistance Adjustment Act of 2002''.

SEC. 2. INCREMENTAL INCREASE IN RATES OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.

(a) SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''at the monthly rate of'' and all that follows and inserting ''at the monthly rate of—

''(A) for months occurring during fiscal year 2003, $900 for full-time, $676 for three-quarter-time, or $450 for half-time pursuit; and

''(B) for months occurring during a subsequent fiscal year, $985 for full-time, $740 for three-quarter-time, or $492 for half-time pursuit.''; and

(B) in paragraph (2), by striking ''at the rate of'' and all that follows and inserting ''at the rate of the lesser of—

''(A) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or

''(B)(i) for months occurring during fiscal year 2003, $900 per month for a full-time course; or (ii) for months occurring during a subsequent fiscal year, $985 per month for a full-time course.'';

(2) in subsection (b), by striking ''at the rate of'' and all that follows and inserting ''at the rate of—

''(1) for months occurring during fiscal year 2003, $900 per month; and

''(2) for months occurring during a subsequent fiscal year, $985 per month.''; and

(3) in subsection (c)(2), by striking ''shall be'' and all that follows and inserting ''shall be—

''(A) for months occurring during fiscal year 2003, $727 for full-time, $545 for three-quarter-time, or $364 for half-time pursuit; and

''(B) for months occurring during a subsequent fiscal year, $795 for full-time, $596 for three-quarter-time, or $398 for half-time pursuit.''.

(b) CORRESPONDENCE COURSES.—Section 3534(b) of that title is amended by striking ''for each $670'' and all that follows and inserting ''for each amount which is paid to the spouse as an educational assistance allowance for such course as follows:

''(1) For amounts paid during fiscal year 2003, $900.

''(2) For amounts paid during a subsequent fiscal year, $985.''.

(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of that title is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by designating the second sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin;

(3) in paragraph (1), as so designated, by striking ''the basic rate of $670 per month.'' and inserting ''the basic rate of—

''(A) for months occurring during fiscal year 2003, $900 per month; and

''(B) for months occurring during a subsequent fiscal year, $985 per month.''; and

(4) in paragraph (2), as so designated—

(A) by striking ''$184 per calendar month'' and inserting ''$282 per calendar month for months occurring during fiscal year 2003, or $307 per calendar months for months occurring during a subsequent fiscal year''; and

(B) by striking ''$184 a month'' and inserting ''$282 a month for months occurring during fiscal year 2003, or $307 a month for months occurring during a subsequent fiscal year''.

(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of that title is amended by striking ''shall be $488 for the first six months'' and all that follows and inserting ''shall be—

''(A) $655 for the first six months, $490 for the second six months, $325 for the third six months, and $164 for the fourth and any succeeding six-month period of training, if such six-month period of training begins during fiscal year 2003; and

''(B) $717 for the first six months, $536 for the second six months, $356 for the third six months, and $179 for the fourth and any succeeding six-month period of training, if such six-month period of training begins during a subsequent fiscal year.''.

(e) EFFECTIVE DATE.—(1) The amendments made by this section shall take effect as of October 1, 2003, and shall apply with respect to educational assistance allowances payable under chapter 35 and section 3687(b)(2) of title 38, United States Code, for months beginning on or after that date.

(2) No adjustment in rates of monthly training allowances shall be made under section 3687(d) of title 38, United States Code, for fiscal years 2003 and 2004.

SEC. 3. MODIFICATION OF DURATION OF EDUCATIONAL ASSISTANCE.

Section 3511(a)(1) of title 38, United States Code, is amended by striking ''45 months'' and all that follows and inserting ''45 months, or 36 months in the case of a person who first files a claim for educational assistance under this chapter after the date of the enactment of the Survivors' and Dependents' Educational Assistance Adjustment Act of 2002, or to the equivalent thereof in part-time training.''.

SEC. 4. INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) of title 38, United States Code, is amended in the first sentence by striking ''may not exceed $13,000,000'' and all that follows through the end and inserting ''may not exceed $18,000,000.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

By Mr. THOMAS (for himself, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. SPECTER, Mrs. CARNAHAN, Ms. SNOWE, and Mr. CLELAND):

S. 2233. A bill to amend title XVIII of the Social Security Act to establish a medicare subvention demonstration project for veterans; to the Committee on Finance.

Mr. THOMAS. Mr. President, I am pleased to rise today to introduce the Medicare Equity for Veterans Act of 2002 with Senators ROCKEFELLER, JEFFORDS, SPECTER, CARNAHAN, SNOWE, and CLELAND. This legislation, known as Medicare Subvention, will require the Centers for Medicare and Medicaid Services, (CMS), to reimburse VA facilities for services provided to certain Medicare-eligible veterans. These servicemen and women have paid into the Medicare system over the course of their careers, just as every other American has done, but are prohibited from utilizing the program when treated at a VA facility. It is only fair that they be allowed to use their Medicare coverage in the private sector or at a VA facility.

The number of veterans enrolled in the VA health system has more than doubled since 1996. In many VA facilities, Medicare-eligible veterans, called Priority 7 or Category C veterans, compose the largest increase in patient caseloads. At the VA facility in Cheyenne, WY, only 131 Priority 7 veterans were treated in fiscal year 1997. However, in fiscal year 2001 the same facility treated over 2,200 Priority 7 veterans. Clearly, the VA is experiencing substantial growth and even more obvious is the fact that veterans want to receive their health care services at a VA facility. Unfortunately, funding for the VA health care system has not kept pace. In my state, Medicare Subvention would expand access to services as most communities are designated primary care health professional shortage areas. Private sector physicians and other primary care providers are not as readily available as they are in other part of the country, which means that the VA is sometimes the only option.

Specifically, the Medicare Equity for Veterans Act of 2002 establishes a three-year demonstration program at ten VA sites, three of which must be in rural areas. The Secretaries of VA and HHS may either choose Medicare+Choice or Preferred Provider Option model for the sites. These options give the Secretaries flexibility to determine which model works best for each particular site—ensuring veterans receive quality and timely care.

The VA can provide Medicare covered services more efficiently and cost effectively than the private sector, which could potentially save the Medicare program money. Under the Preferred Provider Option, the VA would be reimbursed at 95 percent of the comparable private sector rate and 100 percent of the Medicare+Choice applicable rate, after excluding such targeted private hospital adjustments as Medicare Disproportionate Share Hospital payments, Graduate Medical Education, Indirect Medical Education and capital-related costs.

The VA will be responsible for continuing to pay for services provided to Medicare-eligible veterans who have been treated prior to fiscal year 1998. This ensures a good faith effort on the part of the VA, but will also allow the agency to immediately begin billing Medicare for services provided to Medicare-eligible veterans after fiscal year 1998. Additionally, this bill protects the Medicare Trust Fund by capping Medicare payments to the VA at $75 million a year for the duration of the three-year demonstration.

Prior to the end of the demonstration, the Government Accounting Office, GAO, must conduct a thorough program evaluation. The GAO report ensures the demonstration met its goal of providing quality and cost effective care to our nation's veterans. The GAO is further required to provide specific recommendations to the Secretaries of VA and HHS on how best to expand Medicare Subvention nationwide.

Veterans deserve quality, efficient and equitable health care treatment. Enactment of this legislation is the first step toward attaining that goal. I urge all my colleagues to consider cosponsoring the Medicare Equity for Veterans Act of 2002.

Mr. ROCKEFELLER. Mr. President, I am pleased to join with Senators THOMAS and JEFFORDS to introduce the Medicare Equity for Veterans Act of 2002. This bill will authorize a demonstration project to allow VA to bill Medicare for health care services provided to certain dual eligible beneficiaries. The legislation, known as VA subvention, is a concept that has been discussed over the years by many of us in Congress, by veterans service organizations, and by advisory bodies studying the VA health care system. Although the VA subvention proposal is a small effort compared to the other changes that must be made to the Medicare program, it is enormously important to our veterans and the health care system they depend upon.

Until recently, when we looked at the VA health care budget, we focused on the declining veteran population and declining demand. We are in a totally different predicament today. More and more veterans are turning to the VA health care system, and that is a success story. More than 38 percent of all veterans are Medicare eligible; unfortunately, many of these veterans are seeking VA care because of the lack of drug benefits in the Medicare program. An uncertain economy and the collapse of many HMOs have also contributed to the rising number of veterans turning to VA. While I will continue to push for Medicare prescription drug benefits, something must be done to alleviate the pressure on the VA health care system. VA simply does not have unlimited resources to meet this demand.

VA now has more than 6 million veterans enrolled in health care services. That's more than double the figure in 1996. Not surprisingly, access to care has been affected by the high demand for services. It is not unusual for some veterans in certain pockets of the country to have to wait for more than a year to have their initial appointment with a VA primary care physician. Because of concerns about access and quality of care, last fall the VA was prepared to cease enrolling new higher income veterans, so called Category C or Priority 7 veterans, into the VA health care system. Their decision was based simply upon budgetary constraints, as VA suffered from a $400 million shortfall. Except for a last minute approval of supplemental funding, veterans would have been turned away from VA health care services.

This legislation would allow VA and HHS to either choose a Medicare+Choice or Preferred Provider Option at ten VA sites, three of these sites must be in rural areas. Several years ago the Department of Defense attempted a Medicare subvention pilot and lost money, primarily on the restrictive nature of the capitation model they set up. This proposal will give VA the opportunity to look at both the preferred provider and Medicare+Choice model, and in the end select the model that works best for them.

For veterans, approval of this veterans subvention would mean the infusion of new revenue to their health care system and, thus, greater access to care. For the Department of Health and Human Services, a VA subvention demonstration project will provide the opportunity to assess the effects of coordination on improving efficiency, access, and quality of care for dual-eligible beneficiaries. In addition, it would also present an opportunity to reduce Medicare expenditures. Under the Medicare+Choice option in our legislation, the reimbursable rate will be 100 percent of the rate normally paid to a Medicare+Choice provider. However, under the Preferred Provider Option, reimbursement rates would be 95 percent of otherwise applicable rates. For both options the rates would be further discounted by excluding Disproportionate Hospital Share adjustments, VA's direct graduate medical education costs, its indirect medical education costs, and 67 percent of capital-related costs. As a further way to limit exposure to the Trust Fund during the three year demonstration portion of this bill, this proposal caps all Medicare payments to the VA at $75 million per year. Allowing VA to bill Medicare is good for the Federal health care system overall. It's a classic ''win-win'' situation.

VA would also be required to maintain its current level of services to Medicare-eligible veterans who have been served prior to 1998, and would be effectively limited to reimbursement for care provided to new patients since then. In 1998, Congress allowed all veterans to enroll for VA care and receive a standard benefits package, which includes prescription drugs.

Prior to the end of the three year demonstration, GAO will do a thorough evaluation of the program and submit a report to Congress, complete with details on performance measures and justification for planned expansion. Based upon the GAO recommendations, VA and HHS will jointly determine the most appropriate health care delivery models for the expansion of the program through the entire VA health care system. GAO will continue to evaluate the expansion of the program for an additional six years.

During the first session of the 106th Congress, Senator JEFFORDS and I successfully pushed a similar proposal through the Senate Finance Committee. Indeed, over the last couple years, we have tried to enact this proposal several times. Unfortunately, we have continually met resistance. Our goal is to overcome this resistance and enact this proposal without delay. I believe that without enactment of a Medicare subvention program, VA may well choose to bar middle-income veterans without a service-connected disability from coming to the VA for care. I think we all want to avoid that prospect.

There are over 33 thousand Medicare eligible veterans enrolled in the VA health benefits program in my State of West Virginia. The VA spent almost $116 million providing health care to them last year. Though this is telling information, I cannot provide my colleagues with the truly crucial piece of the story, that is, the number of these Medicare-eligible veterans who aren't coming to VA because of long waiting lines and lack of adequate resources. This demonstration project would encourage these eligible veterans, who have not previously received care from the Huntington, Beckley, Martinsburg, and Clarksburg VAMCs, to do so.

Truly, this VA/Medicare proposal is a way to provide quality health care to veterans who are eligible for both systems of care, while at the same time preserving and protecting the Medicare Trust Fund. Let us not delay any longer.

I wish to remind my colleagues of the burden VA now carries in providing health care to Medicare-eligible veterans. Many Senators have asked me for a solution to the financial woes of the hospitals in their States. Enacting this proposal is part of the answer.

Veterans deserve the opportunity to come to VA facilities for their care and bring their Medicare coverage with them. It makes sense for all parties.

Mr. GRASSLEY. Mr. President, today, Senator THOMAS has introduced a bill to establish a medicare subvention demonstration project for veterans and I would like to take this opportunity to say a few words about the issue of medicare subvention for Department of Veterans Affairs (VA) health care. I have heard from many Iowa veterans who are frustrated that Medicare does not reimburse for medical care provided by the VA. While veterans who have a disability connected to military service have their health care paid for in whole or in part by the VA, veterans who do not have a service connected disability are listed as ''priority 7'' and are required to pay co-payments for the receipt of VA health care. Many of these priority 7 veterans are Medicare eligible, yet they cannot use their Medicare benefits to pay for VA health care.

The number of priority 7 veterans enrolled in VA health care has increased greatly in recent years, especially in my state of Iowa. This is only the tip of the iceberg in terms of the number of veterans eligible to enroll in the VA health system as priority 7. However, the current VA funding formula does not allocate resources to pay for the care of priority 7 veterans. These costs are intended to be recouped by billing private insurance or through out-of-pocket co-pays charged to the veteran, which in fact fall far short of covering the additional costs to the VA system of serving priority 7 veterans. Allowing Medicare to reimburse for health care provided in VA facilities would help alleviate this funding short-fall in the VA system while giving Medicare eligible veterans greater choice and flexibilty in meeting their health care needs. Medicare subvention for VA health care would be a win-win situation for veterans, which is why I strongly support the concept of Medicare subvention for VA health care.

Questions remain about what effect Medicare subvention for VA health care could have on the Medicare trust fund. It is possible that Medicare outlays will increase if Medicare begins to pay for health care at VA facilities for Medicare eligible veterans currently using the VA. However, if veterans who are covered by Medicare begin to use the VA in lieu of private health care and the VA is able to provide those services at a lower cost, Medicare could actually see savings.

In the 106th Congress, the Senate Finance Committee reported a bill, S. 1928, which included a Medicare subvention demonstration program similar to the one introduced by Senator THOMAS today. The CBO scored the Medicare subvention portion of this bill as costing Medicare $70 million over five years. This is a matter that should be studied further and is an issue that would be closely examined in a demonstration program such as the one Senator THOMAS has proposed.

At the end of the day, Medicare subvention for VA health care is a good idea. I believe that Senator THOMAS is on the right track with his proposed Medicare subvention demonstration program and I look forward to working with him and other members of the Senate Finance Committee to move forward on this important issue.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 248—CONCERNING THE RISE OF ANTI-SEMITISM IN EUROPE

Mr. CORZINE submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 248

Whereas there has been a significant rise in anti-Semitic attacks on Jewish people and Jewish institutions in Europe during the last 18 months;

Whereas the continued violence in the Middle East has fueled anti-Semitic sentiments in Europe;

Whereas on March 31, 2002, the Or Aviv synagogue in Marseille, France, was burned to the ground by anti-Semitic arsonists;

Whereas on March 30, 2002, Shneur Zalman Teldon and Zev Goldberg, Yeshiva students from New Jersey, were brutally beaten on the streets of Berlin, Germany, in an anti-Semitic attack;

Whereas in April 2002, supporters of Swiss Ambassador to Germany, Thomas Borer, alleged that he was removed from his post as a result of a ''Jewish plot'' against him;

Whereas in Belgium, many anti-Semitic attacks have been reported against Jewish institutions, including a gasoline bomb attack on a Brussels synagogue;

Whereas on April 11, 2002, in Bondy, France, 15 hooded attackers wielding sticks and metal bars assaulted a teen-age soccer team from the Maccabi Bondy association after making anti-Semitic remarks; and

Whereas anti-Semitic attacks have impacted every nation in Europe: Now, therefore, be it

Resolved, That it is the sense of the Senate that the governments of Europe should—

(1) take all necessary steps to protect the safety and well-being of their respective Jewish communities; and

(2) make a concerted effort to cultivate an atmosphere of cooperation and reconciliation among the Jewish and non-Jewish residents of Europe.

Mr. CORZINE. Mr. President, I rise today to submit a resolution calling upon the governments of Europe to take all necessary steps to protect the safety and well being of the European Jewish Community and to make an effort to foster cooperation and reconciliation between Jewish and non-Jewish residents.

The recent success in the first round of the French Presidential election of Jean-Marie LePen, a candidate who once dismissed the horrific atrocities committed against the Jews and others by the Nazis as ''a detail in history'', stands as the latest and perhaps the most troubling sign of a growing tide of anti-Semitism in France. As the second-highest vote getter in France's multi-candidate presidential election, Le Pen will face Jacques Chirac in the upcoming runoff. The election of LePen has sent shockwaves throughout the Jewish community, which has watched as a nascent but virulent strain of anti-Semitism has gained momentum in France, a county with nearly 600,000 Jews.

But, France is not the only country that has experienced a surge in anti-Semitism in the last few months. There has been a horrifying increase in the number of anti-Semitic acts throughout Europe, with major incidents in Belgium, Switzerland, and Germany, as well as France, Synagogues in Brussels and Marseille have been burned. Jews have been physically assaulted in Berlin and in Bondy, an eastern suburb of Paris. Community Centers, school buses, and Jewish sites have been vandalized throughout the region. And the Jewish community has faced a persistent barrage of anti-Semitic propaganda and libel.

This is not a trifling matter. In France alone, police estimate that there are 10 to 12 anti-Semitic incidents each day. Germany, which has made historic strides since the Second World War to reduce anti-Semitism, has experienced a troubling surge in hate crimes against the Jewish Community. Anti-Semites in Germany, for example, have spray-painted swastikas on a monument memorializing Jews murdered during the Holocaust, and have attacked Jewish youths returning home from a Passover seder. The unrelenting wave of anti-Semitic activities has terrorized the European Jewish community and dredged up memories of Europe's anti-Semitic past.

The international community must not allow this situation to intensify before significant action is taken. It was only a short time ago that the bigotry of a few evil people snowballed into an international phenomenon of tragic proportions. There are disturbing similarities between the recent proliferation of anti-Semitism and the increase in anti-Semitism in interwar Europe. The Holocaust also began with small, seemingly isolated events, but developed into a methodical campaign to exterminate an entire people. It is imperative that something be done immediately to quell the pernicious tide of anti-Semitism throughout the continent.

Anti-Semitism is an abomination against civilized society and must be condemned in the strongest possible terms. The international community must not stand idly by as this problem worsens. Europe has a fundamental responsibility to encourage toleration and understanding between all of its citizens, Jew and non-Jew alike.

I strongly urge my colleagues to support this resolution as an important message to Europe's Jews that we stand with them and to Europe's leaders that more needs to be done to guarantee peaceful coexistence for all of its citizens. I hope it can be adopted without delay.

SENATE RESOLUTION 249—DESIGNATING APRIL 30, 2002, AS ''DIA DE LOS NINOS: CELEBRATING YOUNG AMERICANS'', AND FOR OTHER PURPOSES

Mr. HATCH submitted the following resolution; which was referred to the Committee on Finance.

S. RES. 249

Whereas many nations throughout the world, and especially within the Western hemisphere, celebrate ''Día de los Niños'' on the 30th of April, in recognition and celebration of their country's future—their children;

Whereas children represent the hopes and dreams of the people of the United States;

Whereas children are the center of American families;

Whereas children should be nurtured and invested in to preserve and enhance economic prosperity, democracy, and the American spirit;

Whereas Hispanics in the United States, the youngest and fastest growing ethnic community in the Nation, continue the tradition of honoring their children on this day, and wish to share this custom with the rest of the Nation;

Whereas 1 in 4 Americans is projected to be of Hispanic descent by the year 2050, and there are, in 2002, approximately 12.3 million Hispanic children in the United States;

Whereas traditional Hispanic family life centers largely on children;

Whereas the primary teachers of family values, morality, and culture are parents and family members, and we rely on children to pass on these family values, morals, and culture to future generations;

Whereas more than 500,000 children drop out of school each year and Hispanic dropout rates are unacceptably high;

Whereas the importance of literacy and education are most often communicated to children through family members;

Whereas families should be encouraged to engage in family and community activities that include extended and elderly family members and encourage children to explore, develop confidence, and pursue their dreams;

Whereas the designation of a day to honor the children of the Nation will help affirm for the people of the United States the significance of family, education, and community;

Whereas the designation of a day of special recognition of children of the United States will provide an opportunity to children to reflect on their future, to articulate their dreams and aspirations, and find comfort and security in the support of their family members and communities;

Whereas the National Latino Children's Institute, serving as a voice for children, has worked with cities throughout the country to declare April 30 as ''Día de los Niños: Celebrating Young Americans''—a day to bring together Latinos and other communities nationwide to celebrate and uplift children; and

Whereas the children of a nation are the responsibility of all its people, and people should be encouraged to celebrate the gifts of children to society—their curiosity, laughter, faith, energy, spirit, hopes, and dreams: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 30, 2002, as ''Día de los Niños: Celebrating Young Americans''; and

(2) requests that the President issue a proclamation calling on the people of the United States to join with all children, families, organizations, communities, churches, cities, and States across the Nation to observe the day with appropriate ceremonies, including—

(A) activities that center around children, and are free or minimal in cost so as to encourage and facilitate the participation of all our people;

(B) activities that are positive, uplifting, and that help children express their hopes and dreams;

(C) activities that provide opportunities for children of all backgrounds to learn about one another's cultures and share ideas;

(D) activities that include all members of the family, and especially extended and elderly family members, so as to promote greater communication among the generations within a family, enabling children to appreciate and benefit from the experiences and wisdom of their elderly family members;

(E) activities that provide opportunities for families within a community to get acquainted; and

(F) activities that provide children with the support they need to develop skills and confidence, and find the inner strength—the will and fire of the human spirit—to make their dreams come true.

Mr. HATCH. Mr. President, it is with great pleasure that I rise to submit a resolution designating the 30th day of April 2002 as ''Día de los Niños: Celebrating Young Americans.''

Nations throughout the world, and especially within Latin America, celebrate Día de los Niños on the 30th of April, in recognition and celebration of their country's future, their children. Many American Hispanic families continue the tradition of honoring their children on this day by celebrating Día de los Niños in their homes.

The designation of a day to honor the children of the Nation will help affirm for the people of the United States the significance of family, education, and community. This special recognition of children will provide them with an opportunity to reflect on their future, articulate their dreams and aspirations, and find comfort and security in the support of their family members and communities. This resolution calls on the American people to join with all children, families, organizations, communities, churches, cities, and States across the Nation to observe the day with appropriate ceremonies and activities.

I urge my colleagues to join me in supporting America's youth by endorsing the resolution designating April 30, 2002 Día de los Niños: Celebrating Young Americans.

SENATE RESOLUTION 250—EXTENDING SYMPATHY AND CONDOLENCES TO THE FAMILIES OF THE CANADIAN SOLDIERS WHO WERE KILLED AND THE CANADIAN SOLDIERS WHO WERE WOUNDED ON APRIL 18, 2002, IN AFGHANISTAN, AND TO ALL OF THE CANADIAN PEOPLE

Ms. LANDRIEU submitted the following resolution; which was considered and agreed to:

S. RES. 250

Whereas United States and Canadian military forces have fought side by side in conflicts since the World War I;

Whereas the fighting men and women of Canada have always proved themselves to be brave and courageous warriors;

Whereas the Canadian forces are currently fighting alongside United States and European troops in the hunt for the remnants of Osama bin Laden's terrorist organization, al Qaeda, and Afghanistan's former ruling militia, the Taliban;

Whereas the Canadian soldiers of the 3rd Battalion, Princess Patricia's Canadian Light Infantry Battle Group, have been in Afghanistan since late January 2002, as part of Operation Apollo, and have distinguished themselves for their heroism and professionalism; and

Whereas despite this tragic incident, the Canadian Army is focusing on the task at hand and is still fully engaged in its mission in Afghanistan: Now, therefore, be it

Resolved, That the Senate—

(1) expresses sorrow for the loss of life and wounding of Canadian servicemen in Afghanistan;

(2) offers sympathy and condolences to the families of the Canadian soldiers who were killed and the Canadian soldiers who were wounded on April 18, 2002, in Afghanistan, and to all of the Canadian people;

(3) affirms that the centuries-old bond between the Canadian and American peoples and their Armed Forces remains solid; and

(4) praises the performance of Canadian servicemen in Afghanistan for their heroism and professionalism.

SENATE RESOLUTION 251—MAKING MINORITY PARTY APPOINTMENTS FOR THE COMMITTEES ON ENVIRONMENT AND PUBLIC WORKS AND GOVERNMENTAL AFFAIRS FOR THE 107TH CONGRESS

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 251

Resolved, That the following be the minority membership on the Committees on Environment and Public Works and Governmental Affairs for the remainder of the 107th Congress, or until their successors are appointed:

Environment and Public Works: Mr. Smith of New Hampshire, Mr. Warner, Mr. Inhofe, Mr. Bond, Mr. Voinovich, Mr. Crapo, Mr. Chafee, Mr. Specter, and Mr. Domenici.

Governmental Affairs: Mr. Thompson, Mr. Stevens, Ms. Collins, Mr. Voinovich, Mr. Cochran, Mr. Bennett, Mr. Bunning, and Mr. Fitzgerald.

SENATE CONCURRENT RESOLUTION 102—PROCLAIMING THE WEEK OF MAY 14 THROUGH MAY 11, 2002, AS ''NATIONAL SAFE KIDS WEEK''

Mr. DODD submitted the following concurrent resolution, which was referred to the Committee on the Judiciary.

S. CON. RES. 102

Whereas unintentional injury is the number 1 killer of children under 15 years of age;

Whereas in 2000, more than 373,000 children under 15 years of age were treated in hospital emergency rooms for bicycle-related injuries, and more than 16,600 children under 15 years of age were treated for equestrian-related injuries;

Whereas more than 40 percent of all bicycle-related deaths are due to head injuries, approximately three-fourths of all bicycle-related head injuries occur among children under 15 years of age, and 60 percent of all equestrian-related deaths are related to head injury;

Whereas the single most effective safety device available to reduce head injury and death from bicycle and equestrian accidents is a properly fitted and safety certified helmet;

Whereas national estimates report that helmet use among child bicyclists is only between 15 and 25 percent;

Whereas every dollar spent on a bicycle helmet saves this Nation $30 in direct medical costs and other costs to society;

Whereas there is no national safety standard in place for equestrian helmets;

Whereas the National Safe Kids Campaign supports efforts to reduce equestrian-related head injuries;

Whereas the National Safe Kids Campaign promotes childhood injury prevention by uniting diverse groups into State and local coalitions, developing innovative educational tools and strategies, initiating legislative changes, promoting new technology, and raising awareness through the media; and

Whereas the National Safe Kids Campaign, with the support of founding sponsor Johnson & Johnson, has planned special childhood injury prevention activities and community-based events for National Safe Kids Week 2002, which will focus on the prevention of wheel-related traumatic brain injuries: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) proclaims the week of May 4 through May 11, 2002, as ''National Safe Kids Week'';

(2) supports the efforts and activities of the National Safe Kids Campaign to prevent childhood injuries, including bicycle-related traumatic brain injuries and equestrian-related brain injuries; and

(3) requests that the President issue a proclamation calling upon the people of the United States to observe National Safe Kids Week with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3293. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3294. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3295. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3296. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3297. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms.

STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3298. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3299. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3300. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3301. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3302. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3303. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3304. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3305. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3306. Mr. SMITH, of Oregon submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3307. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3308. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3309. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3310. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3311. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3312. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3313. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3281 submitted by Mr. SCHUMER and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3314. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3203 submitted by Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3315. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3275 submitted by Ms. CANTWELL and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3316. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3317. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr . HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3318. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3319. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3320. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3321. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3322. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3323. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3324. Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. CHAFEE, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3239 submitted by Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. LIEBERMAN, Mr. MCCAIN, Mr. JEFFORDS, Mr. CHAFEE, Mr. NELSON of Nebraska, and Mr. REID) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3325. Mr. SHELBY (for himself, Mr. AKAKA, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3326. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3327. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes.

SA 3328. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, supra.

SA 3329. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3330. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3331. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3293. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3294. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 103, line 19, strike all through page 104, line 7, and insert the following:

''(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.

''(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, or

''(ii) $500 for each 0.5 kilowatt of capacity of such property.

SA 3295. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction is consistent with the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The term ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established

by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(A) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall maintain, and shall produce for the Commission's examination, such books, accounts, memoranda, records, and any other materials the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an affiliate or associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

SA 3296. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-base rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect

(b) REMEDIAL MEASURES FOR MARKET POWER.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either

alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall maintain, and shall produce for the Commission's examination, such books accounts, memoranda, records, and any other materials the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an affiliate or associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

SA 3297. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.)(as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution

only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—the term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SA 3298. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2. . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transition.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) results in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(a) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in the sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever names designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company an each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer or assets, goods, or services (other than the sale of electricity or gas) or into any financial transaction (including the issuance of securities, loans, or guarantees or indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interest or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditions review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding company diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods, or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services;

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company or affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3299. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will advance the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

''(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.c. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISIONS.—

Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in

the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) Is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and record.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITIED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer of assets, goods, or services (other than the sale of electricity or gas) or into any financial transaction (including the issuance of securities, loans, or guarantees of indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interests or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditions review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding companies diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods, or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services;

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company or affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3300. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding for Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal year 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) include employee protective arrangements, as defined in Sec. 222 of the Public Utility Holding Company Act of 2002, that the Commission concludes will fairly and equitable protect the interests of employees affected by the proposed transaction; and

''(iv) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(2) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); and

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKER POWER.—(In this section the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the

jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EMPLOYEE PROTECTIVE ARRANGEMENT.—The term ''employee protective arrangement'' means a provision that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired companies;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(7) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(8) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(9) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(10) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(11) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(12) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(13) PERSON.—The term ''person'' means an individual or company.

(14) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(15) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(16) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(17) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(a) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(18) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) Is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer of assets, goods, or services (other than the sale of electricity or gas) or into nay financial transaction (including the issuance of securities, loans, or guarantees of indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interest or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditious review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding company diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate

thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services.

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company of affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(8) the interest of employees affected by a proposed transaction shall be protected under employee protective arrangements the Commission concludes are fair and equitable.

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3301. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

(a) ALTERNATIVE CONDITIONS.—The Federal Power Act is amended by inserting after section 4 (16 U.S.C. 797) the following:

''SEC. 4A. ALTERNATIVE CONDITIONS.

''(a) DEFINITION OF SECRETARY.—In this section, the term 'Secretary', with respect to an application under subsection (e) of section 4 for a license for a project works within a reservation of the United States, means the Secretary of the department under whose supervision the reservation falls.

''(b) PROPOSAL OF ALTERNATIVE CONDITION.—When a person applies for a license for any project works within a reservation of the United States under subsection (e) of section 4, and the Secretary deems a condition to the license to be necessary under the first proviso of that subsection, the license applicant or any other interested person may propose an alternative condition.

''(c) ACCEPTANCE OF PROPOSED ALTERNATIVE CONDITION.—Notwithstanding the first proviso of section 4(e), the Secretary may accept an alternative condition proposed under subsection (b), and the Commission shall include in the license that alternative condition, if the Secretary determines, based on substantial evidence, that the alternative condition—

''(1) provides for the adequate protection and use of the reservation; and

''(2) will cost less to implement, or result in improved operation of the project works for electricity production, as compared with the condition initially deemed necessary by the Secretary.

''(d) WRITTEN STATEMENT.—The Secretary shall submit into the public record of the Commission proceeding, with any condition under section 4(e) or alternative condition that the Secretary accepts under subsection (c), a written statement explaining the basis for the condition or alternative condition, and each reason for not accepting any alternative condition under this subsection, including—

''(1) a statement of the goals, objectives, or applicable management requirements established by the Secretary for protection and use of the reservation;

''(2) the consideration by the Secretary of all studies, data, and other factual information made available to the Secretary that are relevant to the decision of the Secretary; and

''(3) any information made available to the Secretary regarding the effects of the condition or alternative condition on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply (including information voluntarily provided in a timely manner by the applicant and any other person).

''(e) PROCEDURE.—Not later than 1 year after the date of enactment of this section, the Secretary of each department that exercises supervision over a reservation of the United States shall, by regulation, establish a procedure to expeditiously resolve any conflict arising under this section.''.

(b) ALTERNATIVE PRESCRIPTIONS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended—

(1) by striking ''SEC. 18. The Commission'' and inserting the following:

''SEC. 18. OPERATION OF NAVIGATION FACILITIES.

''(a) IN GENERAL.—The Commission''; and

(2) by adding at the end the following:

''(b) ALTERNATIVE PRESCRIPTIONS.—

''(1) IN GENERAL.—When the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under subsection (a), the license applicant or licensee, or any other interested person, may propose an alternative condition.

''(2) ACCEPTANCE OF PROPOSED ALTERNATIVE CONDITION.—Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, may accept an alternative condition proposed under paragraph (1), and the Commission shall include in the license the alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence, that the alternative condition—

''(A) will be no less effective to meet the goals, objectives, or applicable management requirements identified by the Secretary under this section, than the fishway initially prescribed by the Secretary; and

''(B) will cost less to implement, or result in improved operation of the project works for electricity production, as compared to the fishway initially prescribed by the Secretary.

''(3) WRITTEN STATEMENT.—The Secretary shall submit into the public record of the Commission proceeding, with any prescription under subsection (a) or alternative condition that the Secretary accepts under paragraph (2), a written statement explaining the basis for the prescription or alternative condition, and reason for not accepting any alternative condition under this subsection, including—

''(A) a statement of the biological and other goals, objectives, or applicable management requirements identified by the Secretary under this section;

''(B) the consideration by the Secretary of all studies, data, and other factual information made available to the Secretary and relevant to the decision of the Secretary; and

''(C) any information made available to the Secretary regarding the effects of the prescription or alternative condition on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply (including information voluntarily provided in a timely manner by the applicant and any other person).

''(4) PROCEDURE.—Not later than 1 year after the date of enactment of this subsection, each Secretary concerned shall, by regulation, establish a procedure to expeditiously any resolve conflict arising under this subsection.''.

SEC. 302. RELICENSING STUDY.

(a) DEFINITION OF NEW LICENSING CONDITION.—In this section, the term ''new license condition'' means any condition imposed under—

(1) section 4(e) of the Federal Power Act (16 U.S.C. 797(e));

(2) section 10(a) of the Federal Power Act (16 U.S.C. 803(a));

(3) section 10(e) of the Federal Power Act (16 U.S.C. 803(e));

(4) section 10(j) of the Federal Power Act (16 U.S.C. 803(j));

(5) section 18 of the Federal Power Act (16 U.S.C. 811); or

(6) section 401(d) of the Clean Water Act (33 U.S.C. 1341(d)).

(b) STUDY.—The Federal Energy Regulatory Commission shall, jointly with the Secretary of Commerce, the Secretary of the Interior, and the Secretary of Agriculture, conduct a study of all new licenses issued for existing projects under section 15 of the Federal Power Act (16 U.S.C. 808) since January 1, 1994.

(c) SCOPE.—The study shall analyze—

(1) the length of time the Commission has taken to issue each new license for an existing project;

(2) the additional cost to the licensee attributable to new license conditions;

(3) the change in generating capacity attributable to new license conditions;

(4) the environmental benefits achieved by new license conditions;

(5) significant unmitigated environmental damage of the project and costs to mitigate such damage; and

(6) litigation arising from the issuance or failure to issue new licenses for existing projects under section 15 of the Federal Power Act or the imposition or failure to impose new license conditions.

(d) CONSULTATION.—The Commission shall give interested persons and licensees an opportunity to submit information and views in writing.

(e) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes findings made as a result of the study.

SEC. 302. DATA COLLECTION PROCEDURES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall jointly develop procedures for ensuring complete and accurate data concerning the time and cost to parties in the hydroelectric

licensing process under part I of the Federal Power Act (16 U.S.C. 791 et seq.).

(b) PUBLICATION OF DATA.—Data described in subsection (a) shall be published regularly, but not less frequently than every 3 years.

SA 3302. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, after line 25, add the following:

''(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term 'combined heat and power system property' includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (iii) and (iv) thereof.

SA 3303. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In the amendment strike all after the first word and insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3304. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3305. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 202, between lines 22 and 23, insert the following:

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Paragraph (2) of section 29(f) (relating to application of section) is amended by inserting ''(January 1, 2005, in the case of any coke or coke gas produced in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

SA 3306. Mr. SMITH of Oregon submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike Title III and insert the following:

''SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

''(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

'(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

'(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

'(A) provides for the adequate protection and utilization of the reservation; and

'(B) will either—

'(i) cost less to implement, or

'(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

'(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.'

''(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 881) is amended by—

''(1) inserting ''(a)'' before the first sentence; and

''(2) adding at the end the following:

'(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

'(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of

commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee, that the alternative—

'(A) will be no less protective of the fish resources that the fishway initially prescribed by the Secretary; and

'(B) will either—

'(i) cost less to implement, or

'(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

'(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties form proposing alternative prescriptions.' ''

''(c) TIME OF FILING APPLICATION.—Section 15(c)(1) of the Federal Power Act (16 U.S.C. 808(c)(1)) is amended by striking the first sentence and inserting the following:

'(1) Each application for a new license pursuant to this section shall be filed with the Commission—

'(A) at least 24 months before the expiration of the term of the existing license in the case of licenses that expire prior to 2008; and

'(B) at least 36 months before the expiration of the term of the existing license in the case of licenses that expire in 2008 or any year thereafter.' ''

SA 3307. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. _____. RECYCLED OIL LIABILITY.

Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(c)) is amended by adding at the end the following:

''(5) PRIOR TO EFFECTIVE DATE.—

''(A) IN GENERAL.—Except on occurrence of a condition described in subparagraph (B), with respect to any period before the effective date described in paragraph (4), no person (including the United States or any State) may—

''(i) recover, under paragraph (3) or (4) of section 107(a), from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil; or

''(ii) use the authority of section 106 against a service station dealer (other than a person described in paragraph (1) or (2) of section 107(a)).

''(B) CONDITIONS.—A condition referred to in subparagraph (A) is that a service station dealer—

''(i) mixes recycled oil with any other hazardous substance; or

''(ii) fails to store, treat, transport, or otherwise manage the recycled oil in compliance with any applicable standard in effect on the date on which the storage, treatment, transportation, or management activity occurred.

''(C) NO EFFECT ON JUDICIAL OR ADMINISTRATIVE ACTION.—Nothing in this paragraph affects any final judicial or administrative action.''.

SA 3308. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION H—MISCELLANEOUS

TITLE _____—COMPREHENSIVE SUPERFUND REAUTHORIZATION AND REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Superfund Amendments and Reauthorization Act of 2002''.

Subtitle A—State Delegation

SEC. ___11. DELEGATION TO STATES OF AUTHORITY WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

''SEC. 129. DELEGATION TO STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

''(a) DELEGATION OF AUTHORITY.—

''(1) IN GENERAL.—A State that seeks to administer this Act at facilities in the State that are listed on the National Priorities List may, after providing notice and an opportunity for a public hearing, submit to the Administrator for approval under subsection (b) an application, in such form as the Administrator may require, for delegation to the State of the authority described in paragraph (2).

''(2) AUTHORITY.—

''(A) IN GENERAL.—In accordance with an application of a State approved under subsection (b), the Administrator shall delegate to the State (referred to in this section as an 'authorized State') sole administrative authority to administer this Act at facilities in the State that are listed on the National Priorities List.

''(B) INCLUSIONS.—A delegation of authority to a State under subparagraph (A) includes the authority to—

''(i) collect information;

''(ii) allocate liability;

''(iii) conduct technical investigation, evaluations, and risk assessments;

''(iv) develop response alternatives;

''(v) select responses;

''(vi) carry out remedial design, remedial action, and operation and maintenance;

''(vii) recover response costs;

''(viii) require potentially responsible parties to carry out response actions; and

''(ix) otherwise compel implementation of a response action.

''(C) SCOPE.—An authorized State shall administer this Act, in lieu of the President or the Administrator, as applicable, at facilities in the State to which the application of the State approved under subsection (b) applies.

''(b) APPROVAL OF APPLICATION.—

''(1) IN GENERAL.—Not later than the deadline determined under paragraph (3), the Administrator shall—

''(A) issue a notice of approval of the application; or

''(B) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the disapproval.

''(2) FAILURE TO ACT.—If the Administrator fails to issue a notice of approval or disapproval of an application by the deadline determined under paragraph (3), the application shall be deemed to have been approved.

''(3) DEADLINE.—The deadline referred to in paragraphs (1) and (2) is—

''(A)(i) in the case of a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), 60 days after the date on which the Administrator receives an application under subsection (a) from the State; and

''(ii) in the case of a State that is not authorized to administer and enforce the corrective action requirements described in clause (i), 120 days after the date on which the Administrator receives an application under subsection (a) from the State; or

''(B) in the case of a State that agrees to a greater period of time than the applicable period described in subparagraph (A), that greater period.

''(c) NO DUPLICATION OF RESPONSE EFFORTS.—

''(1) NO DUPLICATION OF DOCUMENTS.—If, as of the date of delegation of authority to a State over a facility under subsection (a), an investigational or other response document relating to the facility has been completed at the facility in coordination with the Administrator, the authorized State shall not require the document to be modified.

''(2) PARITY WITH CORRECTIVE ACTION PROGRAM.—A response action carried out under this Act that is approved by an authorized State shall be deemed to satisfy corrective action requirements under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(d) INCREASED COSTS OF RESPONSE ACTION.—

''(1) IN GENERAL.—An authorized State may select a remedial action based on remedy selection criteria that are more stringent than the criteria identified in section 121(b) if the authorized State agrees to pay any increased costs resulting from selection of the remedial action.

''(2) NO COST RECOVERY.—If an authorized State selects a remedial action under paragraph (1) that results in increased costs, the authorized State shall neither seek nor accept from any person, under this Act or any other Federal or State law, assistance to pay the increased costs.

''(e) JUDICIAL REVIEW.—An order that is issued by an authorized State under section

106 shall be reviewable only in an appropriate United States district court in accordance with section 113.

''(f) COST RECOVERY.—

''(1) BY A DELEGATED STATE.—Of the amount of any response costs recovered by an authorized State from a responsible party under section 107 with respect to a facility listed on the National Priorities List—

''(A) the authorized State may retain an amount equal to the sum of—

''(i) 25 percent of the response costs; and

''(ii) the amount of response costs incurred by the authorized State with respect to the facility; and

''(B) any remaining amount shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

''(2) BY THE ADMINISTRATOR.—The Administrator shall carry out cost recovery efforts of the Administrator—

''(A) in States that are not authorized States; and

''(B) in authorized States, in any case in which an authorized State requests in writing that the Administrator continue cost recovery efforts in the authorized State.

''(g) FUNDING.—

''(1) IN GENERAL.—The Administrator shall provide grants to, or enter into cooperative agreements with, each authorized State to carry out this section.

''(2) FACILITY-SPECIFIC GRANTS.—A grant under paragraph (1) shall be—

''(A) made to an authorized State on a facility-specific basis; and

''(B) funded by the Administrator as costs relating to each facility covered by the grant arise.

''(3) PERMITTED USE OF GRANT FUNDS.—An authorized State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the authorized State.

''(4) PROHIBITED USE OF GRANT FUNDS.—An authorized State to which a grant is made under this section may not use grant funds to pay any amount required under section 104(c)(3).

''(5) NO CLAIM AGAINST FUND.—Notwithstanding any other provision of law, funds that may be provided under this subsection shall not constitute a claim against the Hazardous Substances Fund or the United States.

''(h) INSUFFICIENT FUNDS.—If funds made available in any fiscal year are insufficient to fund all commitments made by the Administrator under this section, the Administrator shall have sole authority and discretion to establish priorities and delay payments until such time as sufficient funds are available.

''(i) COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Nothing in this section affects the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.

''(2) PARTIAL AND FACILITY-SPECIFIC DELEGATIONS.—The Administrator may use authority provided under paragraph (1) to make partial or facility-specific delegations of authority under this section (including the authority to select a remedy).''.

(b) CONFORMING AMENDMENT.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

''(7) Making grants to authorized States under section 129(g).''.

Subtitle B—Selection of Remedial Actions

SEC. ___21. SELECTION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended by striking subsection (b) and inserting the following:

''(b) GENERAL RULES.—

''(1) REMEDY SELECTION CRITERIA.—In selecting a remedy under this section, subject to paragraph (3), the President shall take into consideration each of the factors described in paragraph (2).

''(2) FACTORS.—The factors referred to in paragraph (1) are—

''(A) factors described in section 300.430 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 2002), consisting of—

''(i) the threshold criterion of protection of human health and the environment (as described in clauses (i) and (ii) of paragraph (3)(B));

''(ii) balancing criteria, including—

''(I) long-term effectiveness and permanence;

''(II) reduction of toxicity, mobility, or volume of hazardous substances or pollutants or contaminants, through treatment;

''(III) short-term effectiveness;

''(IV) implementability; and

''(V) cost; and

''(iii) modifying criteria, including—

''(I) State acceptance of the remedy; and

''(II) community acceptance of the remedy; and

''(B) the additional threshold criterion of compliance with all applicable environmental and siting laws (as described in paragraph (3)(B)(iii)).

''(3) REMEDY SELECTION.—

''(A) IN GENERAL.—The President shall select a remedial action from among alternatives that achieve the threshold criteria described in paragraph (2)(A) in accordance with—

''(i) the goals described in subparagraph (B); and

''(ii) a facility-specific risk assessment under paragraph (4).

''(B) GOALS OF THRESHOLD CRITERIA.—With respect to the selection of a remedial action under this section, the goals of the threshold criteria described in paragraph (2)(A) shall be as follows:

''(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to be protective of human health if, taking into consideration any expected exposures associated with the actual, planned, or reasonably anticipated future use of the land and water resources covered by the remedial action, and on the basis of a facility-specific risk evaluation conducted in accordance with this section, the remedial action achieves—

''(I) from exposure to nonthreshold carcinogenic hazardous substances, or pollutants or contaminants, at the facility, concentration levels that represent a cumulative lifetime additional cancer risk from 10^{-4} to 10^{-6} for a representative exposed population; and

''(II) from exposure to threshold carcinogenic and noncarcinogenic hazardous substances, or pollutants or contaminants, at the facility, a residual risk that does not exceed a hazard index of 1.

''(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to be protective of the environment if the remedial action—

''(I) protects ecosystems from significant threats to sustainability arising from exposure resulting from a release of 1 or more hazardous substances at a site; and

''(II) does not cause a greater threat to the sustainability of the ecosystems than would be caused by a release of a hazardous substance.

''(iii) COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS.—

''(I) IN GENERAL.—A remedial action shall comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under—

''(aa) each Federal environmental law that is legally applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

''(bb) any State law relating to the environment, or to the siting of facilities, that is more stringent than Federal law, is legally applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions, and is demonstrated by the State to be generally applicable and consistently applied to other remedial actions in the State.

''(II) CONTAMINATED MEDIA.—With respect to a remedial action, compliance with section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924) shall not be required with respect to the return, replacement, or disposal of contaminated media (including residuals of contaminated media and other solid wastes generated onsite in the conduct of a remedial action) into the same media in or near areas of contamination onsite at a facility (as those areas exist as of the date of the return, replacement, or disposal of the contaminated media).

''(4) RISK ASSESSMENT.—

''(A) IN GENERAL.—A facility-specific risk assessment relating to a remedial action selected under this section shall be based on known levels or scientific estimates of exposure, developed by taking into consideration the actual, planned, or reasonably anticipated future use of the land and water resources covered by the remedial action.

''(B) REGULATIONS.—Not later than 18 months after the date of enactment of this subparagraph, the Administrator shall promulgate final regulations that—

''(i) implement this section; and

''(ii) promote a realistic characterization of the risks posed by a facility or a proposed remedial action that neither minimizes nor exaggerates the risks.

''(C) USES.—A facility-specific risk assessment shall be used to—

''(i) determine the need for remedial action;

''(ii) evaluate the current and potential hazards, exposures, and risks at a facility;

''(iii) identify potential contaminants, areas, or exposure pathways from further study at a facility;

''(iv) evaluate the protectiveness of alternative remedial actions proposed for a facility;

''(v) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment; and

''(vi) establish protective concentration levels, if no applicable requirement relating to concentration levels exists under subsection (d).''.

SEC. ___22. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)(C)) is amended—

(1) by striking ''consistent with the remedial action to be taken'' and inserting ''not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility,'';

(2) by striking ''$2,000,000'' and inserting ''$4,000,000''; and

(3) by striking ''12 months'' and inserting ''2 years''.

SEC. ___23. CONFORMING AMENDMENTS.

(a) Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by striking ''or relevant and appropriate''.

(b) Section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)) is amended—

(1) in paragraph (1), by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) in the first sentence, by striking ''or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant''; and

(ii) in the second sentence, by striking '', where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release'' and inserting ''in cases in which those goals or criteria are applicable'';

(B) by striking subparagraph (B) and inserting the following:

''(B) ALTERNATE CONCENTRATION LIMITS.—

''(i) IN GENERAL.—Except as provided in clause (ii), for the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable to hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study.

''(ii) EXCEPTION.—Clause (i) shall not apply in any case in which—

''(I) there are known and projected points of entry of groundwater described in clause (i) into surface water;

''(II) on the basis of measurements or projections, there is or will be no statistically significant increase of those constituents from the groundwater in the surface water—

''(aa) at the point of entry; or

''(bb) at any point at which there is reason to believe accumulation of constituents may occur downstream; and

''(III) a remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of the groundwater into surface water.

''(iii) POINTS OF ENTRY.—In a case described in clause (ii), an assumed point of human exposure described in clause (i) may be at each known or projected point of entry described in clause (ii)(III).''; and

(C) in subparagraph (C)(i), by striking ''of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants''; and

(3) in the first sentence of paragraph (4), by striking ''or relevant and appropriate''.

(c) Section 121(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(f)) is amended—

(1) in the second sentence of paragraph (2)(A), by striking ''or relevant and appropriate''; and

(2) in the second sentence of paragraph (3)(A), by striking ''or relevant and appropriate''.

Subtitle C—Recycled Oil Liability

SEC. ___31. RECYCLED OIL LIABILITY.

Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(c)) is amended by adding at the end the following:

''(5) PRIOR TO EFFECTIVE DATE.—

''(A) IN GENERAL.—Except on occurrence of a condition described in subparagraph (B), with respect to any period before the effective date described in paragraph (4), no person (including the United States or any State) may—

''(i) recover, under paragraph (3) or (4) of section 107(a), from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil; or

''(ii) use the authority of section 106 against a service station dealer (other than a person described in paragraph (1) or (2) of section 107(a)).

''(B) CONDITIONS.—A condition referred to in subparagraph (A) is that a service station dealer—

''(i) mixes recycled oil with any other hazardous substance; or

''(ii) fails to store, treat, transport, or otherwise manage the recycled oil in compliance with any applicable standard in effect on the date on which the storage, treatment, transportation, or management activity occurred.

''(C) NO EFFECT ON JUDICIAL OR ADMINISTRATIVE ACTION.—Nothing in this paragraph affects any final judicial or administrative action.''.

Subtitle D—Natural Resource Damages

SEC. ___41. RESTORATION OF NATURAL RESOURCES.

Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by striking ''(f)(1) NATURAL RESOURCES LIABILITY.—In the case'' and inserting the following:

''(f) NATURAL RESOURCE DAMAGES.—

''(1) LIABILITY.—

''(A) IN GENERAL.—In the case''; and

(2) in paragraph (1)(A) (as designated by paragraph (1))—

(A) by inserting after the fourth sentence the following: ''Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration, replacement, or acquisition of the equivalent of those natural resources by the Indian tribe. A restoration, replacement, or acquisition conducted by the United States, a State, or an Indian tribe shall proceed only if the restoration, replacement, or acquisition is technologically feasible from an engineering perspective (at a reasonable cost) and consistent with all known or anticipated response actions at or near the facility.''; and

(B) by striking ''The measure of damages in any action'' and all that follows through the end of the paragraph and inserting the following:

''(B) LIMITATIONS ON LIABILITY.—

''(i) MEASURE OF DAMAGES.—The measure of damages in any action for damages for injury to, destruction of, or loss of natural resources shall be limited to—

''(I) the reasonable costs of restoration, replacement, or acquisition of the equivalent of the natural resources that suffer injury, destruction, or loss caused by a release; and

''(II) the reasonable costs of assessing damages.

''(ii) NONUSE OR LOST USE VALUES.—There shall be no recovery under this Act for any impairment of—

''(I) nonuse values; or

''(II) lost use values.

''(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for the costs described in clause (i) shall not be entitled to recovery under this Act or any other Federal or State law for the same injury to or destruction or loss of the natural resource.

''(iv) RESTRICTIONS ON RECOVERY.—There shall be no recovery from any person under this section for the costs of restoration, replacement, or acquisition of the equivalent of a natural resource if the natural resource injury, destruction, or loss for which the restoration, replacement, or acquisition is sought, and the release of the hazardous substance from which the injury resulted, occurred wholly before December 11, 1980.''.

SEC. ___42. ASSESSMENT OF INJURY TO AND RESTORATION OF NATURAL RESOURCES.

Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

''(C) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—

''(i) REGULATION.—A natural resource injury and restoration assessment conducted for the purposes of this Act by a Federal, State, or tribal trustee shall be performed, to the maximum extent practicable, in accordance with—

''(I) the regulations promulgated under section 301(c); and

''(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

''(ii) FACILITY-SPECIFIC CONDITIONS.—Injury assessment, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on facility-specific information.

''(iii) RECOVERABLE COSTS.—A claim by a trustee for assessment costs—

''(I) may include only—

''(aa) costs that arise from work performed for the purpose of assessing injury to a natural resource to support a claim for restoration of the natural resource; and

''(bb) costs that arise from developing and evaluating a reasonable range of alternative restoration measures; but

''(II) may not include the costs of conducting any type of study relying on the use of contingent valuation methodology.

''(iv) PAYMENT PERIOD.—In a case in which injury to or destruction or loss of a natural resource was caused by a release that occurred over a period of years, payment of damages shall be permitted to be made over a period of years that is appropriate based on—

''(I) the period of time over which the damages occurred;

''(II) the amount of the damages;

''(III) the financial ability of the responsible party to pay the damages; and

''(IV) the period over which, and the pace at which, expenditures are expected to be made for restoration, replacement, and acquisition activities.

''(v) TRUSTEE RESTORATION PLANS.—

''(I) ADMINISTRATIVE RECORD.—

''(aa) IN GENERAL.—A participating natural resource trustees may designate 1 or more lead administrative trustees.

''(bb) RECORD.—A lead administrative trustee may establish an administrative record on which the trustees will base the selection of a plan for restoration of a natural resource.

''(cc) PLAN.—A restoration plan selected under item (bb) shall include a determination of the nature and extent of the natural resource injury.

''(dd) PUBLIC AVAILABILITY.—The administrative record shall be made available to members of the public located at or near the facility at which the release occurred.

''(II) PUBLIC PARTICIPATION.—

''(aa) IN GENERAL.—The Administrator shall promulgate regulations that provide

for procedures under which interested persons (including potentially responsible parties) may participate in the development of the administrative record that is described in subclause (I)(bb) and on which judicial review of restoration plans will be based.

''(bb) MINIMUM REQUIREMENTS.—The procedures described in item (aa) shall include, at a minimum, each of the requirements described in section 113(k)(2)(B).''.

SEC. ___43. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended by adding at the end the following:

''(3) COMPATIBILITY WITH REMEDIAL ACTION.—

''(A) IN GENERAL.—A response action and a restoration measure may be implemented—

''(i) at the same facility; or

''(ii) to address releases from the same facility.

''(B) CONSISTENCY.—A response action and restoration measure described in subparagraph (A)—

''(i) shall not be inconsistent; and

''(ii) shall be implemented, to the maximum extent practicable, in a coordinated and integrated manner.''.

(b) CONSIDERATION OF NATURAL RESOURCES IN RESPONSE ACTIONS.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)) is amended—

(1) in the first sentence, by striking ''The President shall'' and inserting the following:

''(1) IN GENERAL.—The President shall'';

(2) in the second sentence, by striking ''In evaluating'' and inserting the following:

''(2) EVALUATION.—

''(A) COST-EFFECTIVENESS.—In evaluating''; and

(3) by adding at the end the following:

''(B) INJURY TO NATURAL RESOURCES.—In evaluating and selecting remedial actions, the President shall take into account the potential for injury to a natural resource resulting from those actions.''.

SEC. ___44. CONTRIBUTION.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting ''and natural resource damages'' after ''costs''.

Subtitle E—Miscellaneous

SEC. ___51. CLARIFICATION OF TIMING OF REVIEW.

(a) CONGRESSIONAL INTENT.—Congress declares that, contrary to the decision in Fort Ord Toxics Project v. California Environmental Protection Agency, 189 F.3d 828 (9th Cir. 1999), and as recognized by the decisions in Werlein v. United States, 746 F. Supp. 887 (D. Minn. 1990), Heart of America Northwest v. Westinghouse Hanford Co., 820 F. Supp. 1265 (E.D. Wash. 1993), and Worldworks I v. U.S. Army, 22 F. Supp. 1204 (D. Colo. 1998), the challenges to a remedial action ''selected under section 104'' referred to in section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) include a remedial action selected under section 120 of that Act (42 U.S.C. 9620).

(b) CLARIFICATION.—

(1) IN GENERAL.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by striking ''section 104,'' and inserting ''section 104 (including under section 120),''.

(2) FEDERAL FACILITIES.—Section 120(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(e)(2)) is amended in the second sentence by inserting ''under section 104'' after ''remedial action''.

SEC. ___52. FAIR SHARE ALLOCATION AND SETTLEMENTS.

Section 122(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)) is amended—

(1) by striking ''(e) SPECIAL'' and all that follows through the end of paragraph (1) and inserting the following:

''(e) FAIR SHARE ALLOCATION.—

''(1) PROCESS.—With respect to a facility listed on the National Priorities List, the President shall notify potentially responsible parties and initiate an impartial fair share allocation conducted by a neutral third party, if—

''(A) there is more than 1 potentially responsible party that is not—

''(i) eligible for an exemption or limitation under section 107;

''(ii) eligible to receive a settlement under subsection (g); or

''(iii) insolvent, bankrupt, or defunct; and

''(B) 1 or more of the potentially responsible parties agree to bear the costs of the allocation (which shall be considered to be response costs under this Act) under such conditions as the President may prescribe.'';

(2) by striking paragraph (4);

(3) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(4) by inserting after paragraph (1) the following:

''(2) ALLOCATION FACTORS.—

''(A) IN GENERAL.—In conducting an allocation under this subsection, the allocator, without regard to any theory of joint and several liability, shall estimate the fair share of each potentially responsible party using—

''(i) principles of equity;

''(ii) the best information reasonably available to the President, including information received from the potentially responsible parties during the allocation process; and

''(iii) the factors described in subparagraph (B).

''(B) FACTORS.—The factors referred to in subparagraph (A)(iii) are—

''(i) the quantity of hazardous substances contributed by each party;

''(ii) the degree of toxicity of hazardous substances contributed by each party;

''(iii) the mobility of hazardous substances contributed by each party;

''(iv) the degree of involvement of each party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

''(v) the degree of care exercised by each party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

''(vi) the cooperation of each party in contributing to any response action and in providing complete and timely information to the United States or the allocator; and

''(vii) such other equitable factors as the President considers appropriate.'';

(5) in paragraph (3) (as redesignated by paragraph (3))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (B); and

(C) in subparagraph (B) (as redesignated by subparagraph (B)), by striking ''negotiation'' each place it appears and inserting ''allocation'';

(6) in paragraph (4) (as redesignated by paragraph (3))—

(A) by striking subparagraphs (A), (D), and (E);

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(C) in subparagraph (A) (as redesignated by subparagraph (B)), by striking ''subparagraph (A) or for otherwise implementing''; and

(D) in subparagraph (B) (as redesignated by subparagraph (B)), by striking ''preliminary'' each place it appears; and

(7) by adding at the end the following:

''(7) SETTLEMENTS BASED ON ALLOCATIONS.—

''(A) AUTHORITY.—

''(i) IN GENERAL.—The President may use the authority under this section to enter into a settlement agreement with respect to any response action that is the subject of an allocation.

''(ii) SETTLEMENT.—A party may settle the liability of the party for response costs under this Act for an amount equal to the sum of—

''(I) the allocated fair share of the party (including a reasonable risk premium that reflects uncertainties existing at the time of settlement); and

''(II) a portion of unfunded and unattributable shares described in subparagraph (B).

''(B) UNFUNDED AND UNATTRIBUTABLE SHARES.—Any share attributable to an insolvent, defunct, or bankrupt party, or a share that cannot be attributed to any particular party, shall be allocated among any responsible parties not exempted under this Act.

''(C) EFFECT ON PRINCIPLES OF LIABILITY.—Except as provided in paragraph (2), the authorization of an allocation process under this section shall not modify or affect the principles of liability under this title, as determined by the courts of the United States.''.

Subtitle F—Funding

SEC. ___61. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking ''not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''$8,500,000,000 for the period of fiscal years 2003 through 2007''.

SEC. ___62. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

''(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(A) LIMITATION.—For each of fiscal years 2003 through 2007, not more than $40,000,000 of the amounts available in the Hazardous Substance Superfund may be used for purposes (other than basic research) to carry out the program authorized under section 311(b).

''(B) AVAILABILITY.—Amounts made available under subparagraph (A) shall remain available until expended.

''(2) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 2003 through 2007, not more than $7,000,000 of the amounts available in the Hazardous Substance Superfund may be used to carry out section 311(d).''.

SEC. ___63. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

''(1) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There is authorized to be appropriated to the Hazardous Substance Superfund $850,000,000 for each of fiscal years 2003 through 2007.

''(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year specified in subparagraph (A) an amount, in addition to the amount authorized by subparagraph (A), equal to the portion of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 that is not appropriated before the beginning of the fiscal year.''.

SEC. ___64. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) (as amended by section ___11(b)) is amended by inserting after paragraph (7) the following:

''(8) Payment of orphan shares under section 122.''.

SEC. ___65. LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

''(q) RECOVERIES.—Any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.''.

SEC. ___66. COEUR D'ALENE RIVER BASIN, IDAHO.

Title III of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651 et seq.) is amended by adding at the end the following:

''SEC. 313. COEUR D'ALENE RIVER BASIN, IDAHO.

''(a) DEFINITION OF COEUR D'ALENE RIVER BASIN.—In this section, the term 'Coeur d'Alene River Basin' means the watersheds in northern Idaho (including the Bunker Hill Superfund Facility) that contain—

''(1) the north and south forks of the Coeur d'Alene River (including tributaries of the forks);

''(2) the main stem of the Coeur d'Alene River (including tributaries and lateral lakes of the main stem);

''(3) Lake Coeur d'Alene; and

''(4) any area in the State downstream of Lake Coeur d'Alene that is or has been affected by mining-related activities.

''(b) FUNDING.—

''(1) IN GENERAL.—There is appropriated to the Coeur d'Alene River Basin Commission established under section 39–3613 of the Idaho Code (or a successor commission) to carry out a pilot program to provide for environmental response, natural resource restoration, and other related activities in the Coeur d'Alene River Basin, $250,000,000, to remain available until expended.

''(2) RECEIPT AND ACCEPTANCE.—The Coeur d'Alene River Basin Commission shall be entitled to receive the funds and shall accept the funds made available under paragraph (1).''.

SA 3309. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION H—COMPREHENSIVE SUPERFUND REAUTHORIZATION AND REFORM

TITLE XIX—SUPERFUND

Subtitle A—State Role

SEC. 1901. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

''SEC. 129. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) COMPREHENSIVE DELEGATION STATE.—The term 'comprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

''(2) DELEGABLE AUTHORITY.—The term 'delegable authority' means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

''(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

''(i) a preliminary assessment or facility evaluation under section 104;

''(ii) facility characterization under section 104;

''(iii) a remedial investigation under section 104;

''(iv) a facility-specific risk evaluation under section 130;

''(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

''(vi) any other authority identified by the Administrator under subsection (b).

''(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

''(i) a feasibility study under section 104; and

''(ii)(I) remedial action selection under section 121 (including issuance of a record of decision); or

''(II) remedial action planning under section 132(b)(5);

''(iii) enforcement authority related to the authorities described in clauses (i) and (ii); and

''(iv) any other authority identified by the Administrator under subsection (b).

''(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

''(i) remedial design under section 121;

''(ii) enforcement authority related to the authority described in clause (i); and

''(iii) any other authority identified by the Administrator under subsection (b).

''(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

''(i) a removal under section 104;

''(ii) a remedial action under section 104;

''(iii) operation and maintenance under section 104(c);

''(iv) enforcement authority related to the authorities described in clauses (i) through (iii); and

''(v) any other authority identified by the Administrator under subsection (b).

''(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

''(i) information collection activity under section 104(e);

''(ii) allocation of liability under section 135;

''(iii) a search for potentially responsible parties under section 104 or 107;

''(iv) settlement under section 122;

''(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

''(vi) any other authority identified by the Administrator under subsection (b).

''(3) DELEGATED AUTHORITY.—The term 'delegated authority' means a delegable authority that has been delegated to a delegated State under this section.

''(4) DELEGATED FACILITY.—The term 'delegated facility' means a non-Federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

''(5) DELEGATED STATE.—The term 'delegated State' means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

''(6) ENFORCEMENT AUTHORITY.—The term 'enforcement authority' means all authorities necessary to recover response costs, require potentially responsible parties to perform response actions, and otherwise compel implementation of a response action, including—

''(A) issuance of an order under section 106(a);

''(B) a response action cost recovery under section 107;

''(C) imposition of a civil penalty or award under subsection (a)(1)(D) or (b)(4) of section 109;

''(D) settlement under section 122; and

''(E) any other authority identified by the Administrator under subsection (b).

''(7) NONCOMPREHENSIVE DELEGATION STATE.—The term 'noncomprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

''(8) NONDELEGABLE AUTHORITY.—The term 'nondelegable authority' means authority to—

''(A) make grants to community response organizations under section 117; and

''(B) conduct research and development activities under any provision of this Act.

''(9) NON-FEDERAL LISTED FACILITY.—The term 'non-Federal listed facility' means a facility that—

''(A) is not owned or operated by a department, agency, or instrumentality of the United States in any branch of the Government; and

''(B) is listed on the National Priorities List.

''(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

''(1) IN GENERAL.—The President shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

''(2) LIMITATION.—The Administrator shall not identify a nondelegable authority for inclusion in a delegation of any category of delegable authority.

''(c) DELEGATION OF AUTHORITY.—

''(1) IN GENERAL.—Pursuant to an approved State application, the Administrator shall

delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

''(2) APPLICATION.—An application under paragraph (1) shall—

''(A) identify each non-Federal listed facility for which delegation is requested;

''(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

''(C) certify that the State, supported by such documentation as the State, in consultation with the Administrator, considers to be appropriate—

''(i) has statutory and regulatory authority (including appropriate enforcement authority) to perform the requested delegable authorities in a manner that is protective of human health and the environment;

''(ii) has resources in place to adequately administer and enforce the authorities;

''(iii) has procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 132; and

''(iv) agrees to exercise its enforcement authorities to require that persons that are potentially liable under section 107(a), to the extent practicable, perform and pay for the response actions set forth in each category described in subsection (a)(2).

''(3) APPROVAL OF APPLICATION.—

''(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from a State that is not authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), unless the State agrees to a greater length of time for the Administrator to make a determination, the Administrator shall—

''(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with respect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

''(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

''(C) RESUBMISSION OF APPLICATION.—

''(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

''(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

''(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

''(E) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

''(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

''(5) LIMITED DELEGATION.—

''(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and personnel resources, organization, and expertise.

''(B) SPECIAL PROVISIONS.—In the case of a limited delegation of authority to a State under subparagraph (A), the Administrator shall specify the extent to which the State shall be considered to be a delegated State for the purposes of this Act.

''(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

''(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

''(2) AGREEMENTS FOR PERFORMANCE OF DELEGATED AUTHORITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to the agreement agree in the agreement to undertake response actions that are consistent with this Act.

''(B) NO AGREEMENT WITH POTENTIALLY RESPONSIBLE PARTY.—A delegated State shall not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

''(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

''(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

''(ii) shall remain responsible for ensuring performance of the delegated authority.

''(3) COMPLIANCE WITH ACT.—

''(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

''(B) COMPREHENSIVE DELEGATION STATES.—

''(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

''(ii) COSTLIER REMEDIAL ACTION.—

''(I) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

''(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

''(4) JUDICIAL REVIEW.—An order that is issued under section 106 by a delegated State with respect to a delegated facility shall be reviewable only in United States district court under section 113.

''(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

''(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

''(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with paragraphs (1) and (2) of section 121(a);

''(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the cleanup will proceed at the facility under subsection (u) or (v) of section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924); or

''(iii) if the State is a comprehensive delegation State with respect to the facility.

''(B) EFFECT OF DELISTING.—A delisting under clause (ii) or (iii) of subparagraph (A) shall not affect—

''(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

''(ii) the eligibility of the State for funding under this Act;

''(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

''(iv) the enforceability of any consent order or decree relating to the facility.

''(C) NO RELISTING.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

''(ii) CLEANUP NOT COMPLETED.—The Administrator may relist a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A) if cleanup is not completed in accordance with the enforceable agreement under subparagraph (A)(ii).

''(6) COST RECOVERY.—

''(A) RECOVERY BY A DELEGATED STATE.—Of the amount of any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107—

''(i) 25 percent of the amount of any Federal response cost recovered with respect to a facility, plus an amount equal to the amount of response costs incurred by the State with respect to the facility, may be retained by the State; and

''(ii) the remainder shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

''(B) RECOVERY BY THE ADMINISTRATOR.—

''(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if—

''(I) the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party; or

''(II) the delegated State fails to take action to recover response costs within a reasonable time in light of applicable statutes of limitation.

''(ii) NOTICE.—If the Administrator proposes to commence an action for recovery of response costs under section 107, the Administrator shall give the State written notice and allow the State at least 90 days after receipt of the notice to commence the action.

''(iii) NO FURTHER ACTION.—If the Administrator takes action against a potentially responsible party under section 107 relating to a release from a delegated facility, the delegated State may not take any other action for recovery of response costs relating to that release under this Act or any other Federal or State law.

''(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

''(1) REVIEW USE OF FUNDS.—

''(A) IN GENERAL.—The Administrator shall review the certification submitted by the Governor under subsection (f)(8) not later than 120 days after the date of its submission.

''(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the certification of the Governor.

''(C) EXPLANATION.—Not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

''(i) explain why the finding of the Administrator is in error; or

''(ii) explain to the satisfaction of the Administrator how any misapplication or misuse of funds will be corrected.

''(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the satisfaction of the Administrator, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

''(E) REPAYMENT OF FUNDS.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

''(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

''(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

''(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

''(ii) does not have adequate legal authority to request and accept delegation; or

''(iii) is failing to materially carry out the delegated authorities of the State,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

''(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

''(C) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

''(D) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (C), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

''(E) JUDICIAL REVIEW.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

''(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

''(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

''(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

''(4) RETAINED AUTHORITY.—

''(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the intention of the Administrator to perform the removal.

''(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

''(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

''(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g) or except with the concurrence of the delegated State, the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 in performance of a delegable authority that has been delegated to a State with respect to a delegated facility.

''(f) FUNDING.—

''(1) IN GENERAL.—The Administrator shall provide grants to or enter into contracts or cooperative agreements with delegated States to carry out this section.

''(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted under this subsection shall not constitute a claim against the Fund or the United States.

''(3) INSUFFICIENT FUNDS AVAILABLE.—If funds are unavailable in any fiscal year to satisfy all commitments made under this section by the Administrator, the Administrator shall have sole authority and discretion to establish priorities and to delay payments until funds are available.

''(4) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

''(A) determine—

''(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

''(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

''(B) publish a list describing the delegable authorities in each category.

''(5) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (4)(A)(ii) shall be funded as such costs arise with respect to each delegated facility.

''(6) NONFACILITY-SPECIFIC GRANTS.—

''(A) IN GENERAL.—The costs described in paragraph (4)(A)(ii) shall be funded through nonfacility-specific grants under this paragraph.

''(B) FORMULA.—The Administrator shall establish a formula under which funds available for nonfacility-specific grants shall be allocated among the delegated States, taking into consideration—

''(i) the cost of administering the delegated authority;

''(ii) the number of sites for which the State has been delegated authority;

''(iii) the types of activities for which the State has been delegated authority;

''(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under subsection (d)(5);

''(v) the number of other high priority facilities within the State;

''(vi) the need for the development of the State program;

''(vii) the need for additional personnel;

''(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

''(ix) the benefit to human health and the environment of providing the funding.

''(7) PERMITTED USE OF GRANT FUNDS.—A delegated State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the State under this section.

''(8) COST SHARE.—

''(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

''(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

''(9) CERTIFICATION OF USE OF FUNDS.—

''(A) IN GENERAL.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

''(i) a certification that the State has used the funds in accordance with the requirements of this Act and the National Contingency Plan; and

''(ii) information describing the manner in which the State used the funds.

''(B) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a regulation describing with particularity the information that a State shall be required to provide under subparagraph (A)(ii).

''(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a

State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.''.

(b) STATE COST SHARE.—Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

(1) by striking ''(c)(1) Unless'' and inserting the following:

''(c) MISCELLANEOUS LIMITATIONS AND REQUIREMENTS.—

''(1) CONTINUANCE OF OBLIGATIONS FROM FUND.—Unless'';

(2) by striking ''(2) The President'' and inserting the following:

''(2) CONSULTATION.—The President''; and

(3) by striking paragraph (3) and inserting the following:

''(3) STATE COST SHARE.—

''(A) IN GENERAL.—The Administrator shall not provide any remedial action under this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State will pay, in cash or through in-kind contributions, a specified percentage of the costs of the remedial action and operation and maintenance costs.

''(B) ACTIVITIES WITH RESPECT TO WHICH STATE COST SHARE IS REQUIRED.—No State cost share shall be required except for remedial actions under section 104.

''(C) SPECIFIED PERCENTAGE.—

''(i) IN GENERAL.—The specified percentage of costs that a State shall be required to share shall be the lower of 10 percent or the percentage determined under clause (ii).

''(ii) MAXIMUM IN ACCORDANCE WITH LAW PRIOR TO 1996 AMENDMENTS.—

''(I) IN GENERAL.—On petition by a State, the Director of the Office of Management and Budget (referred to in this clause as the 'Director'), after providing public notice and opportunity for comment, shall establish a cost share percentage, which shall be uniform for all facilities in the State, at the percentage rate at which the total amount of anticipated payments by the State under the cost share for all facilities in the State for which a cost share is required most closely approximates the total amount of estimated cost share payments by the State for facilities that would have been required under cost share requirements that were applicable prior to the date of enactment of this subparagraph, adjusted to reflect the extent to which the ability of the State to recover costs under this Act were reduced by reason of enactment of amendments to this Act by division H of the Energy Policy Act of 2002.

''(II) ADJUSTMENT.—The Director may adjust the cost share of a State under this clause not more frequently than every 3 years.

''(D) INDIAN TRIBES.—In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if the land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph shall not apply.''.

(c) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

''(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 129(f).''.

(d) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(b)) is amended by striking ''removal'' each place it appears and inserting ''response''.

(2) CONFORMING AMENDMENT.—Section 101(37)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(37)(B)) is amended by striking ''section 114(c)'' and inserting ''section 114(b)''.

Subtitle B—Community Participation

SEC. 1911. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

''(e) COMMUNITY RESPONSE ORGANIZATIONS.—

''(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

''(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

''(B) at the request of—

''(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

''(ii) a representative group of the potentially responsible parties; or

''(iii) any local governmental entity with jurisdiction over the facility.

''(2) RESPONSIBILITIES.—A community response organization shall—

''(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

''(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties;

''(C) serve as a representative of the local community during the remedial action planning and implementation process; and

''(D) provide reasonable notice of and opportunities to participate in the meetings and other activities of the community response organization.

''(3) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

''(4) COMMUNITY RESPONSE ORGANIZATION INPUT.—

''(A) CONSULTATION.—The Administrator (or if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall—

''(i) consult with the community response organization in developing and implementing the remedial action plan; and

''(ii) keep the community response organization informed of progress in the development and implementation of the remedial action plan.

''(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

''(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

''(5) TECHNICAL ASSISTANCE GRANTS.—

''(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

''(B) PRIOR AWARD.—If a technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

''(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

''(ii) 1 person representing the grant recipient shall serve on the community response organization.

''(6) MEMBERSHIP.—

''(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

''(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

''(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

''(i) Persons who reside or own residential property near the facility.

''(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

''(iii) Persons who are members of the local public health or medical community and are practicing in the community.

''(iv) Representatives of Indian tribes or Indian communities that reside or own property near the facility or that may be adversely affected by a release from the facility.

''(v) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

''(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

''(vii) Members of the local business community.

''(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

''(E) PAY.—Members of a community response organization shall serve without pay.

''(7) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, other Federal agencies, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

''(8) ADMINISTRATIVE SUPPORT.—The Administrator, to the extent practicable, shall provide administrative services and meeting facilities for community response organizations.

''(9) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a community response organization.

''(f) TECHNICAL ASSISTANCE GRANTS.—

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

''(A) AFFECTED CITIZEN GROUP.—The term 'affected citizen group' means a group of 2 or more individuals who may be affected by the

release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

''(B) TECHNICAL ASSISTANCE GRANT.—The term 'technical assistance grant' means a grant made under paragraph (2).

''(2) AUTHORITY.—

''(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

''(B) AVAILABILITY OF APPLICATION PROCESS.—To ensure that the application process for a technical assistance grant is available to all affected citizen groups, the Administrator shall periodically review the process and, based on the review, implement appropriate changes to improve availability.

''(3) SPECIAL RULES.—

''(A) NO MATCHING CONTRIBUTION.—No matching contribution shall be required for a technical assistance grant.

''(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but not less than $5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in advance of the total expenditures to be covered by the grant.

''(4) LIMIT PER FACILITY.—

''(A) 1 GRANT PER FACILITY.—Not more than 1 technical assistance grant may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action.

''(B) DURATION.—The Administrator shall by regulation limit the number of years for which a technical assistance grant may be made available based on the duration, type, and extent of response action at a facility.

''(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry as of the date on which the grant is awarded.

''(6) FUNDING LIMIT.—

''(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

''(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to ⅛ of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

''(7) FUNDING AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a technical assistance grant may not exceed $50,000 for a single grant recipient.

''(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to a total grant amount not exceeding $100,000, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

''(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

''(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

''(i) the nature of the hazardous substances located at a facility;

''(ii) the work plan;

''(iii) the facility evaluation;

''(iv) a proposed remedial action plan, a remedial action plan, and a final remedial design for a facility;

''(v) response actions carried out at the facility; and

''(vi) operation and maintenance activities at the facility.

''(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

''(9) GRANT GUIDELINES.—

''(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

''(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant that hires technical experts and other experts shall act in accordance with the guidelines under subparagraph (A).

''(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

''(1) IN GENERAL.—

''(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity for, and publish notice of, public meetings before or during performance of—

''(i) a facility evaluation, as appropriate;

''(ii) announcement of a proposed remedial action plan; and

''(iii) completion of a final remedial design.

''(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the facility activities and pending decisions of the Administrator.

''(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

''(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and other persons (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

''(B) the subject of the meeting involves discussions directly affecting—

''(i) a legally enforceable work plan document, or any significant amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

''(ii) the final record of information on which the Administrator will base a hazard ranking system score for a facility.

''(3) LIMITATION.—Nothing in this subsection—

''(A) provides for public participation in or otherwise affects any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

''(B) provides for public participation in or otherwise affects any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

''(C) waives, compromises, or affects any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

''(4) EVALUATION.—

''(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

''(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

''(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

''(ii) a public meeting;

''(iii) written responses to significant concerns; and

''(iv) other appropriate participatory activities.

''(5) VIEWS AND PREFERENCES.—

''(A) SOLICITATION.—During the facility evaluation, the Administrator (or other person performing the facility evaluation) shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

''(B) CONSIDERATION.—The views and preferences of the community shall be described in the facility evaluation and considered in the screening of remedial alternatives for the facility.

''(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

''(7) INFORMATION.—

''(A) THE COMMUNITY.—The Administrator, with the assistance of the community response organization under subsection (g) if there is one, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility.

''(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

''(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

''(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

''(9) PRESENTATION.—

''(A) DOCUMENTS.—

''(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

''(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall be consistent with the risk communication principles outlined in section 130(c).

''(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered

by the general public through other sources of exposure.

''(10) REQUIREMENTS.—

''(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action—

''(i) the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1); and

''(ii) the removal action shall achieve the goals of protecting human health and the environment in accordance with section 121(a)(1).

''(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.''.

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

Subtitle C—Selection of Remedial Actions

SEC. 1921. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

''(42) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term 'actual or planned or reasonably anticipated future use of the land and water resources' means—

''(A) the actual use of the land, surface water, and ground water at a facility on the date of submittal of the proposed remedial action plan; and

''(B)(i) with respect to land—

''(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

''(II) any other reasonably anticipated use that the local land use authority, in consultation with the community response organization (if any), determines to have a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

''(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by the governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the date of submission of the proposed remedial action plan.

''(43) SUSTAINABILITY.—The term 'sustainability'', for the purpose of section 121(a)(1)(B)(ii), means the ability of an ecosystem to continue to function within the normal range of its variability absent the effects of a release of a hazardous substance.''.

SEC. 1922. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

''SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

''(a) GENERAL RULES.—

''(1) SELECTION OF COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

''(A) IN GENERAL.—The Administrator shall select a cost-effective remedial action that achieves the goals of protecting human health and the environment as stated in subparagraph (B), and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 130 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2).

''(B) GOALS OF PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.—

''(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources and on the basis of a facility-specific risk evaluation in accordance with section 131, the remedial action achieves a residual risk—

''(I) from exposure to nonthreshold carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10^{-4} to 10^{-6} for the affected population; and

''(II) from exposure to threshold carcinogenic and noncarcinogenic hazardous substances, pollutants, or contaminants at the facility, that does not exceed a hazard index of 1.

''(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to be protective of the environment if the remedial action—

''(I) protects ecosystems from significant threats to their sustainability arising from exposure to releases of hazardous substances at a site; and

''(II) does not cause a greater threat to the sustainability of ecosystems than a release of a hazardous substance.

''(iii) PROTECTION OF GROUND WATER.—A remedial action shall prevent or eliminate any actual human ingestion of drinking water containing any hazardous substance from the release at levels—

''(I) in excess of the maximum contaminant level established under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); or

''(II) if no such maximum contaminant level has been established for the hazardous substance, at levels that meet the goals for protection of human health under clause (i).

''(C) COMPLIANCE WITH FEDERAL AND STATE LAWS.—

''(i) SUBSTANTIVE REQUIREMENTS.—

''(I) IN GENERAL.—Subject to clause (iii), subparagraphs (A) and (D), and paragraph (2), a remedial action shall—

''(aa) comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under each Federal law and each State law relating to the environment or to the siting of facilities (including a State law that imposes a more stringent standard, requirement, criterion, or limitation than Federal law) that is applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

''(bb) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State law relating to the environment or siting of facilities, as determined by the State, after the date of enactment of the Energy Policy Act of 2002, through a rulemaking procedure that includes public notice, comment, and written response comment, and opportunity for judicial review, but only if the State demonstrates that the standard, requirement, criterion, or limitation is of general applicability and is consistently applied to remedial actions under State law.

''(II) IDENTIFICATION OF FACILITIES.—Compliance with a State standard, requirement, criterion, or limitation described in subclause (I) shall be required at a facility only if the standard, requirement, criterion, or limitation has been identified by the State to the Administrator in a timely manner as being applicable to the facility.

''(III) PUBLISHED LISTS.—Each State shall publish a comprehensive list of the standards, requirements, criteria, and limitations that the State may apply to remedial actions under this Act, and shall revise the list periodically, as requested by the Administrator.

''(IV) CONTAMINATED MEDIA.—Compliance with this clause shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then-existing areas of contamination onsite at a facility.

''(ii) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State standards, requirements, criteria, and limitations (including permitting requirements) shall not apply to response actions conducted onsite at a facility.

''(iii) WAIVER PROVISIONS.—

''(I) DETERMINATION BY THE PRESIDENT.—The Administrator shall evaluate and determine if it is not appropriate for a remedial action to attain a Federal or State standard, requirement, criterion, or limitation as required by clause (i).

''(II) SELECTION OF REMEDIAL ACTION THAT DOES NOT COMPLY.—The Administrator may select a remedial action at a facility that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

''(aa) IMPROPER IDENTIFICATION.—The standard, requirement, criterion, or limitation, which was improperly identified as an applicable requirement under clause (i)(I)(aa), fails to comply with the rulemaking requirements of clause (i)(I)(bb).

''(bb) PART OF REMEDIAL ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the total remedial action is completed.

''(cc) GREATER RISK.—Compliance with or attainment of the standard, requirement, criterion, or limitation at the facility will result in greater risk to human health or the environment than alternative options.

''(dd) TECHNICALLY IMPRACTICABILITY.—Compliance with or attainment of the standard, requirement, criterion, or limitation is technically impracticable.

''(ee) EQUIVALENT TO STANDARD OF PERFORMANCE.—The selected remedial action will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation described in clause (i) through use of another approach.

''(ff) INCONSISTENT APPLICATION.—With respect to a State standard, requirement, criterion, limitation, or level, the State has not consistently applied (or demonstrated the intention to apply consistently) the standard, requirement, criterion, or limitation or level in similar circumstances to other remedial actions in the State.

''(gg) BALANCE.—In the case of a remedial action to be undertaken under section 104 or 135 using amounts from the Fund, a selection

of a remedial action that complies with or attains a standard, requirement, criterion, or limitation described in clause (i) will not provide a balance between the need for protection of public health and welfare and the environment at the facility, and the need to make amounts from the Fund available to respond to other facilities that may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of the threats presented by the various facilities.

''(III) PUBLICATION.—The Administrator shall publish any findings made under subclause (II), including an explanation and appropriate documentation.

''(D) REMEDY SELECTION CRITERIA.—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B) pursuant to a facility-specific risk evaluation in accordance with section 130, the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

''(i) The effectiveness of the remedy in protecting human health and the environment.

''(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

''(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

''(iv) The acceptability of the remedial action to the affected community.

''(v) The implementability and technical feasibility of the remedial action from an engineering perspective.

''(vi) The reasonableness of the cost.

''(2) TECHNICAL IMPRACTICABILITY.—

''(A) MINIMIZATION OF RISK.—If the Administrator, after reviewing the remedy selection criteria stated in paragraph (1)(D), finds that achieving the goals stated in paragraph (1)(B) is technically impracticable, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that will most closely achieve the goals stated in paragraph (1) through cost-effective means.

''(B) BASIS FOR FINDING.—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

''(i) there is no known reliable means of achieving at a reasonable cost the goals stated in paragraph (1)(B); and

''(ii) it has not been shown that such a means is likely to be developed within a reasonable period of time.

''(3) PRESUMPTIVE REMEDIAL ACTIONS.—A remedial action that implements a presumptive remedial action issued under section 131 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(D).

''(4) GROUND WATER.—

''(A) IN GENERAL.—The Administrator or the preparer of the remedial action plan shall select a cost effective remedial action for ground water that achieves the goals of protecting human health and the environment as stated in paragraph (1)(B) and with the requirements of this paragraph, and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 130 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2). If appropriate, a remedial action for ground water shall be phased, allowing collection of sufficient data to evaluate the effect of any other remedial action taken at the site and to determine the appropriate scope of the remedial action.

''(B) CONSIDERATIONS FOR GROUND WATER REMEDIAL ACTION.—A decision regarding a remedial action for ground water shall take into consideration—

''(i) the actual or planned or reasonably anticipated future use of ground water and the timing of that use; and

''(ii) any attenuation or biodegradation that would occur if no remedial action were taken.

''(C) UNCONTAMINATED GROUND WATER.—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock if the water is uncontaminated and suitable for such use at the time of submission of the proposed remedial action plan. A remedial action to protect uncontaminated ground water may utilize natural attenuation (which may include dilution or dispersion, but in conjunction with biodegradation or other levels of attenuation necessary to facilitate the remediation of contaminated ground water) so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the uncontaminated ground water.

''(D) CONTAMINATED GROUND WATER.—

''(i) IN GENERAL.—In the case of contaminated ground water for which the actual or planned or reasonably anticipated future use of the resource is as drinking water for humans or livestock, if the Administrator determines that restoration of some portion of the contaminated ground water to a condition suitable for the use is technically practicable, the Administrator shall seek to restore the ground water to a condition suitable for the use.

''(ii) DETERMINATION OF RESTORATION PRACTICABILITY.—In making a determination regarding the technical practicability of ground water restoration—

''(I) there shall be no presumption of the technical practicability; and

''(II) the determination of technical practicability shall, to the extent practicable, be made on the basis of projections, modeling, or other analysis on a site-specific basis without a requirement for the construction or installation and operation of a remedial action.

''(iii) DETERMINATION OF NEED FOR AND METHODS OF RESTORATION.—In making a determination and selecting a remedial action regarding restoration of contaminated ground water the Administrator shall take into account—

''(I) the ability to substantially accelerate the availability of ground water for use as drinking water beyond the rate achievable by natural attenuation; and

''(II) the nature and timing of the actual or planned or reasonably anticipated use of such ground water.

''(iv) RESTORATION TECHNICALLY IMPRACTICABLE.—

''(I) IN GENERAL.—A remedial action for contaminated ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock for which attainment of the levels described in paragraph (1)(B)(iii) is technically impracticable shall be selected in accordance with paragraph (2).

''(II) NO INGESTION.—Selected remedies may rely on point-of-use treatment or other measures to ensure that there will be no ingestion of drinking water at levels exceeding the requirement of subclause (I) or (II) of paragraph (1)(B)(iii).

''(III) INCLUSION AS PART OF OPERATION AND MAINTENANCE.—The operation and maintenance of any treatment device installed at the point of use shall be included as part of the operation and maintenance of the remedy.

''(E) GROUND WATER NOT SUITABLE FOR USE AS DRINKING WATER.—Notwithstanding any other evaluation or determination of the potential suitability of ground water for drinking water use, ground water that is not suitable for use as drinking water by humans or livestock because of naturally occurring conditions, or is so contaminated by the effects of broad-scale human activity unrelated to a specific facility or release that restoration of drinking water quality is technically impracticable or is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring, shall be considered to be not suitable for use as drinking water.

''(F) OTHER GROUND WATER.—Remedial action for contaminated ground water (other than ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock) shall attain levels appropriate for the then-current or reasonably anticipated future use of the ground water, or levels appropriate considering the then-current use of any ground water or surface water to which the contaminated ground water discharges.

''(5) OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives.'';

(2) by redesignating subsection (c) as subsection (b);

(3) by striking subsection (d); and

(4) by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

SEC. 1923. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1901(a)) is amended by adding at the end the following:

''SEC. 130. FACILITY-SPECIFIC RISK EVALUATIONS.

''(a) USES.—

''(1) IN GENERAL.—A facility-specific risk evaluation shall be used to—

''(A) identify the significant components of potential risk posed by a facility;

''(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

''(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

''(D) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment considering the actual or planned or reasonably anticipated future use of the land and water resources.

''(2) COMPLIANCE WITH PRINCIPLES.—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

''(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

''(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

''(b) RISK EVALUATION PRINCIPLES.—A facility-specific risk evaluation shall—

''(1) be based on actual information or scientific estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources to the extent that substituting such estimates for those made using standard assumptions alters the basis for decisions to be made;

''(2) be comprised of components each of which is, to the maximum extent practicable, scientifically objective, and inclusive of all relevant data;

''(3) use chemical and facility-specific data and analysis (such as bioavailability, exposure, and fate and transport evaluations) in preference to default assumptions when—

''(A) such data and analysis are likely to vary by facility; and

''(B) facility-specific risks are to be communicated to the public or the use of such data and analysis alters the basis for decisions to be made; and

''(4) use a range and distribution of realistic and scientifically supportable assumptions when chemical and facility-specific data are not available, if the use of such assumptions would communicate more accurately the consequences of the various decision options.

''(c) RISK COMMUNICATION PRINCIPLES.—The document reporting the results of a facility-specific risk evaluation shall—

''(1) contain an explanation that clearly communicates the risks at the facility;

''(2) identify and explain all assumptions used in the evaluation, any alternative assumptions that, if made, could materially affect the outcome of the evaluation, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

''(3) present—

''(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

''(i) the most scientifically supportable assumptions or a weighted combination of multiple assumptions based on different scenarios; or

''(ii) any other methodology designed to characterize the most scientifically supportable estimate of risk given the information that is available at the time of the facility-specific risk evaluation; and

''(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

''(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

''(5) compare the risks from the facility to other risks commonly experienced by members of the local community in their daily lives and similar risks regulated by the Federal Government.

''(d) REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

''SEC. 131. PRESUMPTIVE REMEDIAL ACTIONS.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a final regulation establishing presumptive remedial actions for commonly encountered types of facilities with reasonably well understood contamination problems and exposure potential.

''(b) PRACTICABILITY AND COST-EFFECTIVENESS.—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human health and the environment stated in section 121(a)(1)(B).

''(c) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

''(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls.''.

SEC. 1924. REMEDY SELECTION PROCEDURES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1923) is amended by adding at the end the following:

''SEC. 132. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

''(a) IN GENERAL.—

''(1) BASIC RULES.—

''(A) PROCEDURES.—A remedial action with respect to a facility that is listed or proposed for listing on the National Priorities List shall be developed and selected in accordance with the procedures set forth in this section.

''(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

''(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the work plan, facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

''(D) DESIGNATION OF POTENTIALLY RESPONSIBLE PARTIES TO PREPARE WORK PLAN, FACILITY EVALUATION, PROPOSED REMEDIAL ACTION, AND REMEDIAL DESIGN AND TO IMPLEMENT THE REMEDIAL ACTION PLAN.—In the case of a facility for which the Administrator is not required to prepare a work plan, facility evaluation, proposed remedial action, and remedial design and implement the remedial action plan—

''(i) if a potentially responsible party or group of potentially responsible parties—

''(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

''(II) demonstrates that the potentially responsible party or group of potentially responsible parties has the financial resources and the expertise to perform those functions;

the Administrator shall designate the potentially responsible party or group of potentially responsible parties to perform those functions; and

''(ii) if more than 1 potentially responsible party or group of potentially responsible parties—

''(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

''(II) demonstrates that the potentially responsible parties or group of potentially responsible parties has the financial resources and the expertise to perform those functions,

the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

''(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

''(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

''(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

''(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

''(B) LIMITATION.—The Administrator may not require a potentially responsible party to implement a presumptive remedial action.

''(b) REMEDIAL ACTION PLANNING PROCESS.—

''(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

''(2) CONTENTS.—A remedial action plan shall consist of—

''(A) the results of a facility evaluation, including any screening analysis performed at the facility;

''(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a), the respective capital costs, operation and maintenance costs, and estimated present worth costs of the remedies, and how the remedies balance the factors stated in section 121(a)(1)(D);

''(C) a description of the remedial action to be taken;

''(D) a description of the facility-specific risk-based evaluation under section 130 and a demonstration that the selected remedial action will satisfy sections 121(a) and 131; and

''(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

''(3) WORK PLAN.—

''(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

''(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

''(C) PUBLICATION.—The Administrator or other person that prepares a work plan shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

''(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

''(E) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a work plan, the Administrator shall—

''(i) identify to the preparer of the work plan, with specificity, any deficiencies in the submission; and

''(ii) require that the preparer submit a revised work plan within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(4) FACILITY EVALUATION.—

''(A) IN GENERAL.—The Administrator (or the preparer of the facility evaluation) shall conduct a facility evaluation at each facility to characterize the risk posed by the facility by gathering enough information necessary to—

''(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

''(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

''(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

''(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

''(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

''(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

''(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

''(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

''(ii) require that the preparer submit a revised facility evaluation within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(5) PROPOSED REMEDIAL ACTION PLAN.—

''(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

''(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization.

''(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

''(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan shall be presented and public comment received.

''(E) REMEDY REVIEW BOARDS.—

''(i) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Administrator shall establish and appoint the members of 1 or more remedy review boards (referred to in this subparagraph as a ''remedy review board''), each consisting of independent technical experts within Federal and State agencies with responsibility for remediating contaminated facilities.

''(ii) SUBMISSION OF REMEDIAL ACTION PLANS FOR REVIEW.—Subject to clause (iii), a proposed remedial action plan prepared by a potentially responsible party or the Administrator may be submitted to a remedy review board at the request of the person responsible for preparing or implementing the remedial action plan.

''(iii) NO REVIEW.—The Administrator may preclude submission of a proposed remedial action plan to a remedy review board if the Administrator determines that review by a remedy review board would result in an unreasonably long delay that would threaten human health or the environment.

''(iv) RECOMMENDATIONS.—Not later than 180 days after receipt of a request for review (unless the Administrator, for good cause, grants additional time), a remedy review board shall provide recommendations to the Administrator regarding whether the proposed remedial action plan is—

''(I) consistent with the requirements and standards of section 121(a);

''(II) technically feasible or infeasible from an engineering perspective; and

''(III) reasonable or unreasonable in cost.

''(v) REVIEW BY THE ADMINISTRATOR.—

''(I) CONSIDERATION OF COMMENTS.—In reviewing a proposed remedial action plan, a remedy review board shall consider any comments submitted under subparagraphs (B) and (D) and shall provide an opportunity for a meeting, if requested, with the person responsible for preparing or implementing the remedial action plan.

''(II) STANDARD OF REVIEW.—In determining whether to approve or disapprove a proposed remedial action plan, the Administrator shall give substantial weight to the recommendations of the remedy review board.

''(F) APPROVAL.—

''(i) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

''(I) contains the information described in section 130(b); and

''(II) satisfies section 121(a).

''(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 180 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

''(G) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(H) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

''(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

''(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(I) JUDICIAL REVIEW.—A recommendation under subparagraph (E)(iv) and the review by the Administrator of such a recommendation shall be subject to the limitations on judicial review under section 113(h).

''(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

''(7) REMEDIAL DESIGN.—

''(A) SUBMISSION.—A remedial design shall be submitted to the Administrator, or in a case in which the Administrator is preparing the remedial action plan, shall be completed by the Administrator.

''(B) PUBLICATION.—After receipt by the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall—

''(i) notify the community response organization; and

''(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

''(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

''(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

''(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall—

''(i) identify with specificity any deficiencies in the submission; and

''(ii) allow the preparer submitting a remedial design a reasonable time (which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator) in which to submit a revised remedial design.

''(c) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

''(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall provide the implementing party a notice that requires the implementing party, within a reasonable period of time specified by the Administrator, to—

''(A) comply with the terms of the remedial action plan; or

''(B) submit a notice for modifying the plan.

''(2) FAILURE TO COMPLY.—

''(A) CLASS ONE ADMINISTRATIVE PENALTY.—In issuing a notice under paragraph (1), the Administrator may impose a class one administrative penalty consistent with section 109(a).

''(B) ADDITIONAL ENFORCEMENT MEASURES.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all additional appropriate enforcement measures pursuant to this Act.

''(d) MODIFICATIONS TO REMEDIAL ACTION.—

''(1) DEFINITION.—In this subsection, the term 'major modification' means a modification that—

''(A) fundamentally alters the interpretation of site conditions at the facility;

''(B) fundamentally alters the interpretation of sources of risk at the facility;

''(C) fundamentally alters the scope of protection to be achieved by the selected remedial action;

''(D) fundamentally alters the performance of the selected remedial action; or

''(E) delays the completion of the remedy by more than 180 days.

''(2) MAJOR MODIFICATIONS.—

''(A) IN GENERAL.—If the Administrator or other implementing party proposes a major modification to the plan, the Administrator or other implementing party shall demonstrate that—

''(i) the major modification constitutes the most cost-effective remedial alternative that is technologically feasible and is not unreasonably costly; and

''(ii) that the revised remedy will continue to satisfy section 121(a).

''(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party, the community response organization, and the local community notice of the proposed major modification and at least 30 days' opportunity to comment on any such proposed modification.

''(C) PROMPT ACTION.—At the end of the comment period, the Administrator shall promptly approve or disapprove the proposed modification and order implementation of the modification in accordance with any reasonable and relevant requirements that the Administrator may specify.

''(3) MINOR MODIFICATIONS.—Nothing in this section modifies the discretionary authority of the Administrator to make a minor modification of a record of decision or remedial action plan to conform to the best science and engineering, the requirements of this Act, or changing conditions at a facility.''.

SEC. 1925. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1924) is amended by adding at the end the following:

''SEC. 133. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

''(a) IN GENERAL.—

''(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 180 days after the completion by the Administrator of physical construction necessary to implement a response action at a facility, or not later than 180 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

''(2) PHYSICAL CONSTRUCTION.—For the purposes of paragraph (1), physical construction necessary to implement a response action at a facility shall be considered to be complete when—

''(A) construction of all systems, structures, devices, and other components necessary to implement a response action for the entire facility has been completed in accordance with the remedial design plan; or

''(B) no construction, or no further construction, is expected to be undertaken.

''(3) COMMENTS.—The public shall be provided 30 days in which to submit comments on the notice of completion and proposed delisting.

''(4) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

''(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

''(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

''(5) FAILURE TO ACT.—If the Administrator fails to publish a notice of withdrawal within the 60-day period described in paragraph (4)—

''(A) the remedial action plan shall be deemed to have been completed; and

''(B) the facility shall be delisted by operation of law.

''(6) EFFECT OF DELISTING.—The delisting of a facility shall have no effect on—

''(A) liability allocation requirements or cost-recovery provisions otherwise provided in this Act;

''(B) any liability of a potentially responsible party or the obligation of any person to provide continued operation and maintenance;

''(C) the authority of the Administrator to make expenditures from the Fund relating to the facility; or

''(D) the enforceability of any consent order or decree relating to the facility.

''(7) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

''(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

''(c) FUTURE USE OF A FACILITY.—

''(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of physical construction, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not satisfy section 121(a).

''(2) FACILITY NOT AVAILABLE FOR ANY USE.—If, after completion of physical construction, a facility is not available for any use or there are continued operation and maintenance requirements that preclude use of the facility, the Administrator shall—

''(A) review the status of the facility every 5 years; and

''(B) require additional remedial action at the facility if the Administrator determines, after notice and opportunity for hearing, that the facility does not satisfy section 121(a).

''(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine that a facility or portion of a facility is available for restricted use while a response action is under way or after physical construction has been completed. The Administrator shall make a determination that uncontaminated portions of the facility are available for unrestricted use when such use would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

''(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

''(e) CHANGE OF USE OF FACILITY.—

''(1) PETITION.—Any person may petition the Administrator to change the use of a facility described in paragraph (2) or (3) of subsection (c) from that which was the basis of the remedial action plan.

''(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to satisfy section 121(a), considering the different use of the facility.

''(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all costs of implementing any necessary additional remedial actions.''.

SEC. 1926. TRANSITION RULES FOR FACILITIES CURRENTLY INVOLVED IN REMEDY SELECTION.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1925) is amended by adding at the end the following:

''SEC. 134. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

''(a) NO RECORD OF DECISION.—

''(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 132 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

''(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 180 days after the date on which notice of the election is given.

''(b) REMEDY REVIEW BOARDS.—

''(1) AUTHORITY.—A remedy review board established under section 132(b)(5)(E) (referred to in this subsection as a 'remedy review board') shall have authority to consider a petition under paragraph (3) or (4).

''(2) GENERAL PROCEDURE.—

''(A) COMPLETION OF REVIEW.—The review of a petition submitted to a remedy review board under this subsection shall be completed not later than 180 days after the receipt of the petition unless the Administrator, for good cause, grants additional time.

''(B) COSTS OF REVIEW.—All reasonable costs incurred by a remedy review board, the Administrator, or a State in conducting a review or evaluating a petition for possible objection shall be borne by the petitioner.

''(C) DECISIONS.—At the completion of the 180-day review period, a remedy review board shall issue a written decision including responses to all comments submitted during the review process with regard to a petition.

''(D) OPPORTUNITY FOR COMMENT AND MEETINGS.—In reviewing a petition under this subsection, a remedy review board shall provide an opportunity for all interested parties, including representatives of the State and local community in which the facility is located, to comment on the petition and, if requested, to meet with the remedy review board under this subsection.

''(E) REVIEW BY THE ADMINISTRATOR.—

''(i) IN GENERAL.—The Administrator shall have final review of any decision of a remedy review board under this subsection.

''(ii) STANDARD OF REVIEW.—In conducting a review of a decision of a remedy review board under this subsection, the Administrator shall accord substantial weight to the decision of the remedy review board.

''(iii) REJECTION OF DECISION.—Any determination to reject a decision of a remedy review board under this subsection must be approved by the Administrator or the Assistant Administrator for Solid Waste and Emergency Response.

''(F) JUDICIAL REVIEW.—A decision of a remedy review board under subparagraph (C) and the review by the Administrator of such a decision shall be subject to the limitations on judicial review under section 113(h).

''(G) CALCULATIONS OF COST SAVINGS.—

''(i) IN GENERAL.—A determination with respect to relative cost savings and whether construction has begun shall be based on operable units or distinct elements or phases of remediation and not on the entire record of decision.

''(ii) ITEMS NOT TO BE CONSIDERED.—In determining the amount of cost savings—

''(I) there shall not be taken into account any administrative, demobilization, remobilization, or additional investigation costs of the review or modification of the remedy associated with the alternative remedy; and

''(II) only the estimated cost savings of expenditures avoided by undertaking the alternative remedy shall be considered as cost savings.

''(3) CONSTRUCTION NOT BEGUN.—

''(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section and which meet the criteria of subparagraph (B), the implementor of the record of decision may file a petition with a remedy review board not later than 90 days after the date of enactment of this section to determine whether an alternate remedy under section 132 should apply to the facility or operable unit.

''(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

''(i) the alternative remedial action proposed in the petition satisfies section 121(a);

''(ii)(I) in the case of a record of decision with an estimated implementation cost of between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 25 percent of the total costs of the record of decision; or

''(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $2,500,000 or more;

''(iii) in the case of a record of decision involving ground water extraction and treatment remedies for substances other than dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $2,000,000 or more; or

''(iv) in the case of a record of decision intended primarily for the remediation of dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $1,000,000 or more.

''(C) CONTENTS OF PETITION.—For the purposes of facility-specific risk assessment under section 130, a petition described in subparagraph (A) shall rely on risk assessment data that were available prior to issuance of the record of decision but shall consider the actual or planned or reasonably anticipated future use of the land and water resources.

''(D) INCORRECT DATA.—Notwithstanding subparagraphs (B) and (C), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

''(4) ADDITIONAL CONSTRUCTION.—

''(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section and which meets the criteria of subparagraph (B), but for which additional construction or long-term operation and maintenance activities are anticipated, the implementor of the record of decision may file a petition with a remedy review board within 90 days after the date of enactment of this section to determine whether an alternative remedial action should apply to the facility or operable unit.

''(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

''(i) the alternative remedial action proposed in the petition satisfies section 121(a); and

''(ii)(I) in the case of a record of decision valued at a total cost between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 50 percent of the total costs of the record of decision;

''(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $5,000,000 or more; or

''(III) in the case of a record of decision involving monitoring, operations, and maintenance obligations where construction is completed, the alternative remedial action achieves cost savings of $1,000,000 or more.

''(C) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information, and the alternative remedial action achieves cost savings of at least $2,000,000.

''(D) MANDATORY REVIEW.—A remedy review board shall not be required to entertain more than 1 petition under subparagraph (B)(ii)(III) or (C) with respect to a remedial action plan.

''(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.

''(6) OBJECTION BY THE GOVERNOR.—

''(A) NOTIFICATION.—Not later than 7 days after receipt of a petition under this subsection, a remedy review board shall notify the Governor of the State in which the facility is located and provide the Governor a copy of the petition.

''(B) OBJECTION.—The Governor may object to the petition or the modification of the remedy, if not later than 90 days after receiving a notification under subparagraph (A) the Governor demonstrates to the remedy review board that the selection of the proposed alternative remedy would cause an unreasonably long delay that would be likely to result in significant adverse human health impacts, environmental risks, disruption of planned future use, or economic hardship.

''(C) DENIAL.—On receipt of an objection and demonstration under subparagraph (C), the remedy review board shall—

''(i) deny the petition; or

''(ii) consider any other action that the Governor may recommend.

''(7) SAVINGS CLAUSE.—Notwithstanding any other provision of this subsection, in the case of a remedial action plan for which a final record of decision under section 121 has been published, if remedial action was not completed pursuant to the remedial action plan before the date of enactment of this section, the Administrator or a State exercising authority under section 129(d) may modify the remedial action plan in order to conform the plan to the requirements of this Act, as in effect on the date of enactment of this section.''.

SEC. 1927. NATIONAL PRIORITIES LIST.

(a) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

(1) in subsection (a)(8), by adding at the end the following:

''(C) provision that in listing a facility on the National Priorities List, the Administrator shall not include any parcel of real property at which no release has actually occurred, but to which a released hazardous substance, pollutant, or contaminant has migrated in ground water that has moved through subsurface strata from another parcel of real estate at which the release actually occurred, unless—

''(i) the ground water is in use as a public drinking water supply or was in such use at the time of the release; and

''(ii) the owner or operator of the facility is liable, or is affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.''; and

(2) by adding at the end the following:

''(i) LISTING OF PARTICULAR PARCELS.—

''(1) DEFINITION.—The term 'parcel of real property', as used in subsection (a)(8)(C) and paragraph (2), means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

''(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) limits the authority of the Administrator under section 104 to obtain access to, and undertake response actions at, any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in ground water.''.

(b) REVISION OF NATIONAL PRIORITIES LIST.—The President shall revise the National Priorities List to conform with the amendments made by subsection (a) not later that 180 days of the date of enactment of this Act.

Subtitle D—Liability

SEC. 1931. CONTRIBUTION FROM THE FUND.

Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9612) is amended by adding at the end the following:

''(g) CONTRIBUTION FROM THE FUND.—

''(1) COMPLETION OF OBLIGATIONS.—A person that is subject to an administrative order issued under section 106 or has entered into a settlement decree with the United States or a State as of the date of enactment of this subsection shall complete the obligations of the person under the order or settlement decree.

''(2) CONTRIBUTION.—A person described in paragraph (1) shall receive contribution from the Fund for any portion of the costs (excluding attorneys' fees) incurred for the performance of the response action after the date of enactment of this subsection if the person is not liable for such costs by reason of a liability exemption or limitation under this section.

''(3) APPLICATION FOR CONTRIBUTION.—

''(A) IN GENERAL.—Contribution under this section shall be made upon receipt by the Administrator of an application requesting contribution.

''(B) PERIODIC APPLICATIONS.—Beginning with the 7th month after the date of enactment of this subsection, 1 application for each facility shall be submitted every 6 months for all persons with contribution rights (as determined under subparagraph (2)).

''(4) REGULATIONS.—Contribution shall be made in accordance with such regulations as the Administrator shall issue within 180 days after the date of enactment of this section.

''(5) DOCUMENTATION.—The regulations under paragraph (4) shall, at a minimum, require that an application for contribution contain such documentation of costs and expenditures as the Administrator considers necessary to ensure compliance with this subsection.

''(6) EXPEDITION.—The Administrator shall develop and implement such procedures as may be necessary to provide contribution to such persons in an expeditious manner, but in no case shall a contribution be made later than 1 year after submission of an application under this subsection.

''(7) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—No contribution shall be made under this subsection unless the Administrator determines that such costs are consistent with the National Contingency Plan.''.

SEC. 1932. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1926) is amended by adding at the end the following:

''SEC. 135. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) ALLOCATED SHARE.—The term 'allocated share' means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under subsection (f)(4).

''(2) ALLOCATION PARTY.—The term 'allocation party' means a party named on a list of parties that will be subject to the allocation process under this section, as issued by an allocator.

''(3) ALLOCATOR.—The term 'allocator' means an allocator retained to conduct an allocation for a facility.

''(4) MANDATORY ALLOCATION FACILITY.—The term 'mandatory allocation facility' means—

''(A) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section and at which there are 2 or more potentially responsible persons, if at least 1 potentially responsible person is viable;

''(B) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other that a department, agency, or instrumentality of the United States) are liable or potentially liable; and

''(C) a codisposal landfill listed on the National Priorities List with respect to which costs are incurred after the date of enactment of this section.

''(5) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under subsection (h).

''(b) ALLOCATIONS OF LIABILITY.—

''(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section.

''(2) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

''(A) incurred response costs with respect to a response action; or

''(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

''(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility or a facility with respect to which a request is made under paragraph (2)) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

''(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under paragraph (2) or (3) of subsection (b) shall not require payment of an orphan share under subsection (h) or contribution under subsection (p).

''(5) EXCLUDED FACILITIES.—

''(A) IN GENERAL.—A codisposal landfill listed on the Natural Priorities List at which costs are incurred after January 1, 2002. This section does not apply to a response action at a mandatory allocation facility for which there was in effect as of the date of enactment of this section, a settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action.

''(B) AVAILABILITY OF ORPHAN SHARE.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A) and for which there was not in effect as of the date of enactment of this section a final judicial order that determined the liability of all parties to the action for response costs incurred after the date of enactment of this section, an allocation shall be conducted for the sole purpose of determining the availability of orphan share funding pursuant to subsection (h)(2) for any response costs incurred after the date of enactment of this section.

''(6) SCOPE OF ALLOCATIONS.—An allocation under this section shall apply to—

''(A) response costs incurred after the date of enactment of this section, with respect to a mandatory allocation facility described in subparagraph (A), (B), or (C) of subsection (a)(4); and

''(B) response costs incurred at a facility that is the subject of a requested or permissive allocation under paragraph (2) or (3) of subsection (b).

''(7) OTHER MATTERS.—This section shall not limit or affect—

''(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

''(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (h)(3);

''(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree, issued prior to the date of enactment of this section with respect to liability under this Act; or

''(D) the validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

''(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

''(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost (including a claim for insurance proceeds) under this Act or any other Federal or State law in connection with a response action—

''(A) for which an allocation is required to be performed under subsection (b)(1); or

''(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report.

''(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report, unless the court determines that a stay would result in manifest injustice.

''(3) TOLLING OF PERIOD OF LIMITATION.—

''(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

''(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

''(ii) the date of initiation of the allocation process under this section.

''(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (f)(4), or of a second or subsequent report under subsection (m).

''(4) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

''(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

''(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party;

''(C) file a proof of claim or take other action in a proceeding under title 11, United States Code; or

''(D) require implementation of a response action at an allocation facility during the conduct of the allocation process.

''(d) ALLOCATION PROCESS.—

''(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Administrator shall establish by regulation a process for conduct of mandatory, requested, and permissive allocations.

''(2) REQUIREMENTS.—In developing the allocation process under paragraph (1), the Administrator shall—

''(A) ensure that parties that are eligible for an exemption from liability under section 107—

''(i) are identified by the Administrator (before selection of an allocator or by an allocator);

''(ii) at the earliest practicable opportunity, are notified of their status; and

''(iii) are provided with appropriate written assurances that they are not liable for response costs under this Act;

''(B) establish an expedited process for the selection, appointment, and retention by contract of a impartial allocator, acceptable to both potentially responsible parties and a representative of the Fund, to conduct the allocation process in a fair, efficient, and impartial manner;

''(C) permit any person to propose to name additional potentially responsible parties as allocation parties, the costs of any expenses incurred by the nominated party (including reasonable attorney's fees) to be borne by the party that proposes the addition of the party to the allocation process if the allocator determines that there is no adequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the allocator; and

''(D) require that the allocator adopt any settlement that allocates 100 percent of the recoverable costs of a response action at a facility to the signatories to the settlement, if the settlement contains a waiver of—

''(i) a right of recovery from any other party of any response cost that is the subject of the allocation; and

''(ii) a right to contribution under this Act, with respect to any response action that is within the scope of allocation process.

''(3) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

''(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

''(B) the date that is 60 days after the date of selection of a removal action.

''(4) NO JUDICIAL REVIEW.—There shall be no judicial review of any action regarding selection of an allocator under the regulation issued under this subsection.

''(5) RECOVERY OF CONTRACT COSTS.—The costs of the Administrator in retaining an allocator shall be considered to be a response cost for all purposes of this Act.

''(e) FEDERAL, STATE, AND LOCAL AGENCIES.—

''(1) IN GENERAL.—Other than as set forth in this Act, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination under this section to the same extent as any other party.

''(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

''(f) ALLOCATION AUTHORITY.—

''(1) INFORMATION-GATHERING AUTHORITIES.—

''(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

''(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

''(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

''(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under subparagraph (C) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

''(E) ORDERS.—In a case of contumacy or failure of a person to obey a subpoena issued under subparagraph (C), an allocator may request the Attorney General to—

''(i) bring a civil action to enforce the subpoena; or

''(ii) if the person moves to quash the subpoena, to defend the motion.

''(F) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

''(2) ADDITIONAL AUTHORITY.—An allocator may—

''(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

''(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

''(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

''(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

''(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

''(3) CONDUCT OF ALLOCATION PROCESS.—

''(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (g).

''(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

''(C) RESPONSES.—The allocator shall not be required to respond to comments.

''(D) STREAMLINING.—The allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

''(4) ALLOCATION REPORT.—The allocator shall provide a written allocation report to the Administrator and the allocation parties that specifies the allocation share of each allocation party and any orphan shares, as determined by the allocator.

''(g) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a nonbinding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this section and without regard to any theory of joint and several liability, based on—

''(1) the amount of hazardous substances contributed by each allocation party;

''(2) the degree of toxicity of hazardous substances contributed by each allocation party;

''(3) the mobility of hazardous substances contributed by each allocation party;

''(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

''(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

''(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

''(7) such other equitable factors as the allocator determines are appropriate.

''(h) ORPHAN SHARES.—

''(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

''(2) COMPOSITION OF ORPHAN SHARE.—The orphan share shall consist of—

''(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party; and

''(B) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States otherwise if—

''(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

''(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

''(iii) the person settled with the United States before the completion of the allocation.

''(3) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator determines was disposed at the facility that cannot be attributed to any identifiable party shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

''(i) INFORMATION REQUESTS.—

''(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

''(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

''(A) the answer is correct to the best of the representative's knowledge;

''(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

''(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

''(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

''(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

''(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

''(j) PENALTIES.—

''(1) CIVIL.—

''(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (i)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than $10,000 per day of violation.

''(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

''(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (i) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

''(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

''(1) DOCUMENT REPOSITORY.—

''(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

''(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

''(2) CONFIDENTIALITY.—

''(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.

''(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

''(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

''(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.

''(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

''(D) DISCOVERY AND ADMISSIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

''(I) a new allocation under subsection (m) or (r) for the same response action; or

''(II) an initial allocation under this section for a different response action at the same facility.

''(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

''(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

''(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness, testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

''(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

''(4) PROCEDURE IF DISCLOSURE SOUGHT.—

''(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

''(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

''(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

''(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

''(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

''(ii) as may be required by court order.

''(5) CIVIL PENALTY.—

''(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than $25,000 per violation.

''(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

''(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

''(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

''(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

''(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

''(l) REJECTION OF ALLOCATION REPORT.—

''(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

''(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

''(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

''(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding an expedited settlement under section 122) based on the allocation.

''(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

''(4) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Acting Assistant Attorney General with authority for implementing this Act.

''(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

''(1) IN GENERAL.—If a report is rejected under subsection (l), the allocation parties shall select an allocator to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

''(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

''(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine that an allocator whose previous report at the same facility has been rejected under subsection (l) is unqualified to serve.

''(n) SETTLEMENTS BASED ON ALLOCATIONS.—

''(1) DEFINITION.—In this subsection, the term 'all settlements' includes any orphan share allocated under subsection (h).

''(2) SETTLEMENTS.—Unless an allocation report is rejected under subsection (l), any allocation party at a mandatory allocation facility (including an allocation party whose allocated share is funded partially or fully by orphan share funding under subsection (h)) shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

''(A) offers to settle with the United States based on the allocated share specified by the allocator; and

''(B) agrees to the other terms and conditions stated in this subsection.

''(3) PROVISIONS OF SETTLEMENTS.—

''(A) IN GENERAL.—A settlement based on an allocation under this section—

''(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

''(ii) shall include—

''(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

''(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

''(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for the response action, despite the diligent prosecution of litigation against any viable

allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

''(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

''(V) provisions through which a settling party shall receive prompt contribution from the Fund under subsection (o) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

''(B) RIGHT TO CONTRIBUTION.—A right to contribution under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

''(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

''(A) information comparing allocation results with actual settlements at multiparty facilities;

''(B) a cumulative analysis of response action costs recovered through post-allocation litigation or settlements of post-allocation litigation;

''(C) a description of any impediments to achieving complete recovery; and

''(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

''(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

''(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement;

''(B) shall not exceed—

''(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

''(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

''(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

''(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response; and

''(C) shall be reduced proportionally by the percentage of the allocated share for that party paid through orphan funding under subsection (h).

''(o) FUNDING OF ORPHAN SHARES.—

''(1) CONTRIBUTION.—For each settlement agreement entered into under subsection (n), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

''(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

''(3) AMOUNTS OWED.—

''(A) DELAY IF FUNDS ARE UNAVAILABLE.—If funds are unavailable in any fiscal year to reimburse all allocation parties pursuant to paragraph (1), the Administrator may delay payment until funds are available.

''(B) PRIORITY.—The priority for reimbursement shall be based on the length of time that has passed since the settlement between the United States and the allocation parties pursuant to subsection (n).

''(C) PAYMENT FROM FUNDS MADE AVAILABLE IN SUBSEQUENT FISCAL YEARS.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

''(4) DOCUMENTATION AND AUDITING.—The Administrator—

''(A) shall require that any claim for contribution be supported by documentation of actual costs incurred; and

''(B) may require an independent auditing of any claim for contribution.

''(p) POST-ALLOCATION CONTRIBUTION.—

''(1) IN GENERAL.—An allocation party (including a party that is subject to an order under section 106 or a settlement decree) that incurs costs after the date of enactment of this section for implementation of a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt payment of contribution for the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (l).

''(2) NOT CONTINGENT.—The right to contribution under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

''(3) TERMS AND CONDITIONS.—

''(A) RISK PREMIUM.—A contribution payment shall be reduced by the amount of the litigation risk premium under subsection (n)(5) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

''(B) TIMING.—

''(i) IN GENERAL.—A contribution payment shall be paid out during the course of the response action that was the subject of the allocation, using reasonable progress payments at significant milestones.

''(ii) CONSTRUCTION.—Contribution for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

''(C) EQUITABLE OFFSET.—A contribution payment is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

''(D) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for contribution.

''(E) WAIVER.—An allocation party seeking contribution waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

''(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

''(q) POST-SETTLEMENT LITIGATION.—

''(1) IN GENERAL.—Subject to subsections (m) and (n), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

''(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (h), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

''(3) IMPLEADER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

''(4) CERTIFICATION.—In commencing or maintaining an action under section 107 against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

''(5) RESPONSE COSTS.—

''(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

''(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

''(i) shall be considered as a necessary cost of response cost; and

''(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (n).

''(r) NEW INFORMATION.—

''(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

''(A) the allocator did not have information concerning—

''(i) 35 percent or more of the materials containing hazardous substances at the facility; or

''(ii) 1 or more persons not previously named as an allocation party that contributed 15 percent or more of materials containing hazardous substances at the facility; and

''(B) the information was discovered subsequent to the issuance of the report by the allocator.

''(2) NEW ALLOCATION.—Any new allocation of responsibility—

''(A) shall proceed in accordance with this section;

''(B) shall be effective only after the date of the new allocation report; and

''(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

''(s) DISCRETION OF ALLOCATOR.—A contract by which the Administrator retain an allocator shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner, and the Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.

''(t) ILLEGAL ACTIVITIES.—Subsections (s), (t), and (u) of section 107 and section 112(g) shall not apply to any person whose liability for response costs under section 107(a)(1) is otherwise based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of limitation, to have been a violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of

which caused the incurrence of response costs at the vessel or facility.''.

SEC. 1933. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended by adding at the end the following:

''(H) LIABILITY OF CONTRACTORS.—

''(i) IN GENERAL.—The term 'owner or operator' does not include a response action contractor (as defined in section 119(e)).

''(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

''(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

''(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

''(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

''(IV) transport a hazardous substance, pollutant, or contaminant.

''(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person associated solely with the provision of a response action or a service or equipment ancillary to a response action.''.

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking ''title or under any other Federal law'' and inserting ''title or under any other Federal or State law''; and

(2) in paragraph (2)—

(A) by striking ''(2) NEGLIGENCE, ETC.—Paragraph (1)'' and inserting the following:

''(2) NEGLIGENCE AND INTENTIONAL MISCONDUCT; APPLICATION OF STATE LAW.—

''(A) NEGLIGENCE AND INTENTIONAL MISCONDUCT.—

''(i) IN GENERAL.—Paragraph (1)''; and

(B) by adding at the end the following:

''(ii) STANDARD.—Conduct under clause (i) shall be evaluated based on the generally accepted standards and practices in effect at the time and place at which the conduct occurred.

''(iii) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under clause (i).

''(B) APPLICATION OF STATE LAW.—Paragraph (1) shall not apply in determining the liability of a response action contractor under the law of a State if the State has adopted by statute a law determining the liability of a response action contractor.''.

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: ''The agreement may apply to a claim for negligence arising under Federal or State law.''.

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

''(4) DECISION TO INDEMNIFY.—

''(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

''(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

''(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.''.

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting ''or threatened release'' after ''release'' each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D), by striking ''carrying out an agreement under section 106 or 122''; and

(2) in the matter following subparagraph (D)—

(A) by striking ''any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act,'' and inserting ''any response action,''; and

(B) by inserting before the period at the end the following: ''or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release''.

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended—

(1) by striking ''and'' at the end; and

(2) by striking ''and is carrying out such contract'' and inserting ''covered by this section and any person (including any subcontractor) hired by a response action contractor''.

(h) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

''(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

''(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

''(A) injury to property, real or personal;

''(B) personal injury or wrongful death;

''(C) other expenses or costs arising out of the performance of services under the contract; or

''(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

''(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

''(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

''(i) STATE STANDARDS OF REPOSE.—Subsections (a)(1) and (h) shall not apply in determining the liability of a response action contractor if the State has enacted a statute of repose determining the liability of a response action contractor.''.

SEC. 1934. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after ''shall be available to the public'' the following: ''not later than 14 days after the records, reports, or information is obtained''.

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking ''(a) In addition'' and inserting the following: ''(a) ORDER.—''

''(1) IN GENERAL.—In addition''; and

(B) by adding at the end the following:

''(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in subparagraphs (A) through (D) of section 107(a)(1), as applicable, is present.''.

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

''(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in subparagraphs (A) through (D) of section 107(a)(1), as applicable, is present.''.

SEC. 1935. CONTRIBUTION PROTECTION.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting ''or cost recovery'' after ''contribution''.

SEC. 1936. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) (as amended by section 1933(a)) is amended by adding at the end the following:

''(I) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term 'owner or operator' includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.''.

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of

1980 (42 U.S.C. 9607) is amended by adding at the end the following:

''(s) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

''(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

''(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

''(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

''(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

''(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

''(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

''(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(I) that meets the conditions specified in paragraph (2).''.

SEC. 1937. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking ''a published tariff and acceptance'' and inserting ''a contract''.

SEC. 1938. LIMITATION ON LIABILITY OF RAILROAD OWNERS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 1936(b)) is amended by adding at the end the following:

''(t) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

''(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

''(2) the spur track is 10 miles long or less; and

''(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track.''.

Subtitle E—Federal Facilities

SEC. 1951. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

''(g) TRANSFER OF AUTHORITIES.—

''(1) DEFINITIONS.—In this section:

''(A) INTERAGENCY AGREEMENT.—The term 'interagency agreement' means an interagency agreement under this section.

''(B) TRANSFER AGREEMENT.—The term 'transfer agreement' means a transfer agreement under paragraph (3).

''(C) TRANSFEREE STATE.—The term 'transferee State' means a State to which authorities have been transferred under a transfer agreement.

''(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility located in the State that is—

''(A) owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government); and

''(B) listed on the National Priorities List.

''(3) TRANSFER OF AUTHORITIES.—

''(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

''(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

''(ii) the State has demonstrated experience in exercising similar authorities;

''(iii) the State has agreed to be bound by all Federal requirements and standards under section 132 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

''(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

''(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

''(i) shall incorporate the determinations of the Administrator under subparagraph (A);

''(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

''(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

''(4) EFFECT OF TRANSFER.—

''(A) STATE AUTHORITIES.—A transferee State—

''(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

''(ii) shall have exclusive authority to exercise authorities that have been transferred.

''(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

''(5) SELECTED REMEDIAL ACTION.—The remedial action selected for a facility under section 132 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

''(A) any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

''(B) any remedial action in excess of remedial action under section 132 that the State selects in accordance with paragraph (10).

''(6) DEADLINE.—

''(A) IN GENERAL.—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

''(7) RESUBMISSION OF APPLICATION.—

''(A) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

''(8) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

''(9) WITHDRAWAL OF AUTHORITIES.—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

''(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

''(B) has violated the transfer agreement, in whole or in part; or

''(C) no longer meets one of the requirements of paragraph (3).

''(10) STATE COST RESPONSIBILITY.—The State may require a remedial action that exceeds the remedial action selection requirements of section 121 if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 132.

''(11) DISPUTE RESOLUTION AND ENFORCEMENT.—

''(A) DISPUTE RESOLUTION.—

''(i) FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENTS.—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency,

or instrumentality and the Governor of the State.

''(ii) FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provided in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

''(iii) FAILURE TO RESOLVE.—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action. To compel implementation of the selected remedy of the State, the State must bring a civil action in United States district court.

''(B) ENFORCEMENT.—

''(i) AUTHORITY; JURISDICTION.—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement only in the United States district court for the district in which the facility is located.

''(ii) REMEDIES.—The district court shall—

''(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

''(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed $25,000 per day;

''(III) compel implementation of the selected remedial action; and

''(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State under this section, in accordance with section 113(j).

''(12) COMMUNITY PARTICIPATION.—If, prior to the date of enactment of this section, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a 'site-specific advisory board', a 'restoration advisory board', or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

''(A) shall be considered to be a community response organization for the purposes of—

''(i) paragraphs (2), (3), (4), and (9) of section 117(e);

''(ii) this subsection;

''(iii) section 130; and

''(iv) section 132; but

''(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of—

''(i) paragraph (1), (5), (6), (7), or (8) of section 117(e); or

''(ii) subsection (f).''.

SEC. 1952. LIMITATION ON CRIMINAL LIABILITY OF FEDERAL OFFICERS, EMPLOYEES, AND AGENTS.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by adding at the end the following:

''(k) CRIMINAL LIABILITY.—Notwithstanding any other provision of this Act or any other law, an officer, employee, or agent of the United States shall not be held criminally liable for a failure to comply, in any fiscal year, with a requirement to take a response action at a facility that is owned or operated by a department, agency, or instrumentality of the United States, under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any other Federal or State law unless—

''(1) the officer, employee, or agent has not fully performed any direct responsibility or delegated responsibility that the officer, employee, or agent had under Executive Order 12088 (42 U.S.C. 4321 note) or any other delegation of authority to ensure that a request for funds sufficient to take the response action was included in the President's budget request under section 1105 of title 31, United States Code, for that fiscal year; or

''(2) appropriated funds were available to pay for the response action.''.

SEC. 1953. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

''(h) FEDERAL FACILITIES.—

''(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

''(2) USE OF FACILITIES.—

''(A) IN GENERAL.—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

''(B) COORDINATION.—The Administrator—

''(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

''(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

''(3) CONSIDERATIONS.—

''(A) EVALUATION OF SCHEDULES AND PENALTIES.—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

''(B) AMENDMENT OF AGREEMENT OR ORDER.—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order.''.

(b) REPORT TO CONGRESS.—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking ''At the time'' and inserting the following:

''(1) IN GENERAL.—At the time''; and

(2) by adding at the end the following:

''(2) ADDITIONAL INFORMATION.—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h).''.

Subtitle F—Natural Resource Damages

SEC. 1961. RESTORATION OF NATURAL RESOURCES.

Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting ''NATURAL RESOURCE DAMAGES.—'' after ''(f)'';

(2) by striking ''(1) NATURAL RESOURCES LIABILITY.—In the case'' and inserting the following:

''(1) LIABILITY.—

''(A) IN GENERAL.—In the case''; and

(3) in paragraph (1)(A) (as designated by paragraph (2))—

(A) by inserting after the fourth sentence the following: ''Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration, replacement, or acquisition of the equivalent of such natural resources by the Indian tribe. A restoration, replacement, or acquisition conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically feasible from an engineering perspective at a reasonable cost and consistent with all known or anticipated response actions at or near the facility.''; and

(B) by striking ''The measure of damages in any action'' and all that follows through the end of the paragraph and inserting the following:

''(B) LIMITATIONS ON LIABILITY.—

''(i) MEASURE OF DAMAGES.—The measure of damages in any action for damages for injury to, destruction of, or loss of natural resources shall be limited to—

''(I) the reasonable costs of restoration, replacement, or acquisition of the equivalent of natural resources that suffer injury, destruction, or loss caused by a release; and

''(II) the reasonable costs of assessing damages.

''(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of nonuse values.

''(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for the costs of restoring an injury to or destruction or loss of a natural resource (including injury assessment costs) shall not be entitled to recovery under this Act or any other Federal or State law for the same injury to or destruction or loss of the natural resource.

''(iv) RESTRICTIONS ON RECOVERY.—

''(I) LIMITATION ON LOST USE DAMAGES.—There shall be no recovery from any person under this section for the costs of a loss of use of a natural resource for a natural resource injury, destruction, or loss that occurred before December 11, 1980.

''(II) RESTORATION, REPLACEMENT, OR ACQUISITION.—There shall be no recovery from any person under this section for the costs of restoration, replacement, or acquisition of the equivalent of a natural resource if the natural resource injury, destruction, or loss for which the restoration, replacement, or acquisition is sought and the release of the hazardous substance from which the injury resulted occurred wholly before December 11, 1980.''.

SEC. 1962. ASSESSMENT OF INJURY TO AND RESTORATION OF NATURAL RESOURCES.

(a) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

''(C) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—

''(i) REGULATION.—A natural resource injury and restoration assessment conducted for the purposes of this Act made by a Federal, State, or tribal trustee shall be performed, to the extent practicable, in accordance with—

''(I) the regulation issued under section 301(c); and

''(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

''(ii) FACILITY-SPECIFIC CONDITIONS.—Injury assessment, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on facility-specific information.

''(iii) RECOVERABLE COSTS.—A claim by a trustee for assessment costs—

''(I) may include only—

''(aa) costs that arise from work performed for the purpose of assessing injury to a natural resource to support a claim for restoration of the natural resource; and

''(bb) costs that arise from developing and evaluating a reasonable range of alternative restoration measures; but

''(II) may not include the costs of conducting any type of study relying on the use of contingent valuation methodology.

''(iv) PAYMENT PERIOD.—In a case in which injury to or destruction or loss of a natural resource was caused by a release that occurred over a period of years, payment of damages shall be permitted to be made over a period of years that is appropriate in view of the period of time over which the damages occurred, the amount of the damages, the financial ability of the responsible party to pay the damages, and the time period over which and the pace at which expenditures are expected to be made for restoration, replacement, and acquisition activities.

''(v) TRUSTEE RESTORATION PLANS.—

''(I) ADMINISTRATIVE RECORD.—Participating natural resource trustees may designate a lead administrative trustee or trustees. The lead administrative trustee may establish an administrative record on which the trustees will base the selection of a plan for restoration of a natural resource. The restoration plan shall include a determination of the nature and extent of the natural resource injury. The administrative record shall be made available to the public at or near the facility at which the release occurred.

''(II) PUBLIC PARTICIPATION.—The Administrator shall issue a regulation for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the trustees will base selection of a restoration plan and on which judicial review of restoration plans will be based. The procedures for participation shall include, at a minimum, each of the requirements stated in section 113(k)(2)(B).''.

(b) REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

''(c) REGULATIONS FOR INJURY AND RESTORATION ASSESSMENTS.—

''(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of injury to natural resources and the costs of restoration of natural resources (including the costs of assessment) for the purposes of this Act and for determination of the time periods in which payment of damages will be required.

''(2) CONTENTS.—The regulation under paragraph (1) shall—

''(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of natural resources;

''(B) identify the best available procedures to determine the reasonable costs of restoration and assessment;

''(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources;

''(D) provide for the designation of a single lead Federal decisionmaking trustee for each facility at which an injury to natural resources has occurred within 180 days after the date of first notice to the responsible parties that an assessment of injury and restoration alternatives will be made; and

''(E) set forth procedures under which—

''(i) all pending and potential trustees identify the injured natural resources within their respective trust responsibilities, and the authority under which such responsibilities are established, as soon as practicable after the date on which a release occurs;

''(ii) assessment of injury and restoration alternatives will be coordinated to the greatest extent practicable between the lead Federal decisionmaking trustee and any present or potential State or tribal trustees, as applicable; and

''(iii) time periods for payment of damages in accordance with section 107(f)(2)(C)(iv) shall be determined.

''(3) DEADLINE FOR ISSUANCE OF REGULATION; PERIODIC REVIEW.—The regulation under paragraph (1) shall be issued not later than 1 year after the date of enactment of the Energy Policy Act of 2002 and shall be reviewed and revised as appropriate every 5 years.''.

SEC. 1963. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended by adding at the end the following:

''(3) COMPATIBILITY WITH REMEDIAL ACTION.—Both response actions and restoration measures may be implemented at the same facility, or to address releases from the same facility. Such response actions and restoration measures shall not be inconsistent with one another and shall be implemented, to the extent practicable, in a coordinated and integrated manner.''.

(b) CONSIDERATION OF NATURAL RESOURCES IN RESPONSE ACTIONS.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)) (as amended by section 1922) is amended by adding at the end the following:

''(6) COORDINATION.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to a natural resource resulting from those actions.''.

SEC. 1964. CONTRIBUTION.

Subparagraph (A) of section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting ''and natural resource damages'' after ''costs''.

Subtitle G—Miscellaneous

SEC. 1971. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking ''and'' at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting ''; and''; and

(3) by inserting after paragraph (10) the following:

''(11) procedures for conducting response actions, including facility evaluations, remedial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

''(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

''(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

''(C) be subject to the requirements of sections 117, 120, 121, and 132 in the same manner and to the same degree as those sections apply to response actions; and

''(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).''.

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 1972. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) (as amended by section 1927(a)(2)) is amended by adding at the end the following:

''(j) NATIONAL PRIORITIES LIST.—

''(1) LIMITATION.—

''(A) IN GENERAL.—After the date of the enactment of this subsection, the President may add vessels and facilities to the National Priorities List only in accordance with the following schedule:

''(i) Not more than 30 vessels and facilities in 2002.

''(ii) Not more than 25 vessels and facilities in 2003.

''(iii) Not more than 20 vessels and facilities in 2004.

''(iv) Not more than 15 vessels and facilities in 2005.

''(v) Not more than 10 vessels and facilities in any year after 2005.

''(B) RELISTING.—The relisting of a vessel or facility under section 129(d)(5)(C)(ii) shall not be considered to be an addition to the National Priorities List for purposes of this subsection.

''(2) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under paragraph (1) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

''(3) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under paragraph (1) only with the concurrence of the Governor of the State in which the vessel or facility is located.''.

SEC. 1973. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C), by striking ''consistent with the remedial action to be taken'' and inserting ''and not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility,'';

(2) by striking ''$2,000,000'' and inserting ''$4,000,000''; and

(3) by striking ''12 months'' and inserting ''2 years''.

Subtitle H—Funding

SEC. 1981. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking ''not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''a total of $8,500,000,000 for the period of fiscal years 2003 through 2007''.

SEC. 1982. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), (as amended by section 1901(c)), is amended by inserting after paragraph (7) the following:

''(8) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 135.''.

SEC. 1983. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

''(m) HEALTH AUTHORITIES.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), $50,000,000 for each of fiscal years 2003 through 2007.

''(2) UNOBLIGATED FUNDS.—Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.''.

SEC. 1984. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

''(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(A) LIMITATION.—For each of fiscal years 2003 through 2007, not more than $30,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

''(B) CONTINUING AVAILABILITY.—Amounts described in subparagraph (A) shall remain available until expended.

''(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

''(A) LIMITATION.—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a):

''(i) For fiscal year 2003, $37,000,000.

''(ii) For fiscal year 2004, $39,000,000.

''(iii) For fiscal year 2005, $41,000,000.

''(iv) For each of fiscal years 2006 and 2007, $43,000,000.

''(B) FURTHER LIMITATION.—No more than 15 percent of those amounts shall be used for training under section 311(a) for any fiscal year.

''(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 2003 through 2007, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d).''.

SEC. 1985. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

''(1) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

''(i) for fiscal year 2003, $250,000,000;

''(ii) for fiscal year 2004, $250,000,000;

''(iii) for fiscal year 2005, $250,000,000;

''(iv) for fiscal year 2006, $250,000,000; and

''(v) for fiscal year 2007, $250,000,000.

''(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year.''.

SEC. 1986. ADDITIONAL LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

''(q) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing January 1, 2003, and ending September 30, 2007, not more than $15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

''(r) RECOVERIES.—Effective beginning January 1, 2003, any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.''.

SEC. 1987. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) (as amended by section 1982) is amended by inserting after paragraph (8) the following:

''(9) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

''(A) a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

''(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

''(i) are unallowable due to contractor fraud;

''(ii) are unallowable under the Federal Acquisition Regulation; or

''(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,

a potentially responsible party may be reimbursed for those costs.''.

SA 3310. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, strike line 15 on page 204 and all that follows through line 8 on page 205.

SA 3311. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

''(1) IN GENERAL.—Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.

''(2) EFFECTIVE DATE.—This subsection shall be effective one day after the enactment of this Act.''.

SA 3312. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be stricken, insert the following:

''(e) RENEWABLE FUELS SAFE HARBOR.—Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.''.

SA 3313. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3281 submitted by Mr. SCHUMER and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . AUTHORITY TO CARRY FIREARMS AND MAKE ARRESTS.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

''k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties;

''(2) authorize—

''(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

''(B) such of those employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors or licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities or operated by a Commission licensee or certificate holder or being transported to or from such facilities—

to carry firearms while in the discharge of their official duties.

''(3) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described in paragraph (2)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless of whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i. of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the approval of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described under paragraph (2)(B)(ii) shall not be implemented until such guidelines have become effective.

''(4) A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without a warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of—

''(A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or a licensee or certificate holder of the Commission;

''(B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both.

''(5) The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Nuclear Regulatory Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;''.

SEC. . UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by inserting before the period at the end of the first sentence the following: ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act''.

SEC. . SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

''a. Any person who intentionally and willfully destroys or causes physical damage to, or who attempts or conspires to destroy or cause physical damage to—

''(1) any production facility or utilization facility licensed under this Act;

''(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

''(3) any nuclear fuel for a utilization facility licensed under this act, or any spent nuclear fuel from such a facility;

''(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility—

shall be fined not more than $10,000 or imprisoned for not more than 20 years or both, or shall be imprisoned for any term of years or for life if death results to any person.''.

SA 3314. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3203 submitted by Mr. JEFFORDS for himself and Mr. SMITH of New Hampshire) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes, which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 510. AUTHORITY TO CARRY FIREARMS AND MAKE ARRESTS.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

''k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties;

''(2) authorize—

''(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

''(B) such of those employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors or licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities—

to carry firearms while in the discharge of their official duties.

''(3) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described in paragraph (2)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless of whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i. of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the approval of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described under paragraph (2)(B)(ii) shall not be implemented until such guidelines have become effective.

''(4) A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without a warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractors or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of—

''(A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or a licensee or certificate holder of the Commission;

''(B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both.

''(5) The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Nuclear Regulatory Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;''.

SEC. 510A. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by inserting before the period at the end of the first sentence the following: ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act''.

SEC. 510B. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

''a. Any person who intentionally and willfully destroys or causes physical damage to, or who attempts or conspires to destroy or cause physical damage to—

''(1) any production facility or utilization facility licensed under this Act;

''(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

''(3) any nuclear fuel for a utilization facility licensed under this act, or any spent nuclear fuel from such a facility;

''(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility—

shall be fined not more than $10,000 or imprisoned for not more than 20 years or both, or shall be imprisoned for any term of years or for life if death results to any person.''.

SA 3315. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3275 submitted by Ms. CANTWELL and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE MANDATORY CONDITIONS

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(e) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under section Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

SA 3316. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE MANDATORY CONDITIONS.

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(c) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES.

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under section Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Commission on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

SA 3317. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal year 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ___—ENVIRONMENTAL CLEANUP FINANCING AND REINSURANCE AND CORPORATE INVERSION LIMITATIONS

Subtitle A—Environmental Cleanup Financing

SEC. ___01. EXTENSION OF SUPERFUND, OIL SPILL LIABILITY, AND LEAKING UNDERGROUND STORAGE TANK TAXES.

(a) EXCISE TAXES.—

(1) SUPERFUND TAXES.—Section 4611(e) is amended to read as follows:

''(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(2) OIL SPILL LIABILITY TAX.—Section 4611(f) is amended to read as follows:

''(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(3) LEAKING UNDERGROUND STORAGE TANK RATE.—Section 4081(d)(3) is amended by striking ''April 1, 2005'' and inserting ''October 1, 2007.''.

(b) CORPORATE ENVIRONMENTAL INCOME TAX.—Section 59A is amended—

(1) by striking ''0.12 percent'' in subsection (a) and inserting ''0.06 percent'', and

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

''(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after the date of the enactment of the Energy Policy Act of 2002 and before January 1, 2007.''.

(c) TECHNICAL AMENDMENTS.—

(1) Section 4611(b) is amended—

(A) by striking ''or exported from'' in paragraph (1)(A),

(B) by striking ''or exportation'' in paragraph (1)(B), and

(C) by striking ''AND EXPORTATION'' in the heading.

(2) Section 4611(d)(3) is amended—

(A) by striking ''or exporting the crude oil, as the case may be'' in the text and inserting ''the crude oil'', and

(B) by striking ''OR EXPORTS'' in the heading.

(d) EFFECTIVE DATES.—

(1) EXCISE TAXES.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) INCOME TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle B—Reinsurance Inversion Limitations

SEC. ___11. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversion Limitations

SEC. ___21. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3318. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—ENVIRONMENTAL CLEANUP FINANCING AND REINSURANCE AND CORPORATE INVERSION LIMITATIONS

Subtitle A—Environmental Cleanup Financing

SEC. ____01. EXTENSION OF SUPERFUND, OIL SPILL LIABILITY, AND LEAKING UNDERGROUND STORAGE TANK EXCISE TAXES.

(a) SUPERFUND TAXES.—Section 4611(e) is amended to read as follows:

''(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(b) OIL SPILL LIABILITY TAX.—Section 4611(f) is amended to read as follows:

''(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(c) LEAKING UNDERGROUND STORAGE TANK RATE.—Section 4081(d)(3) is amended by striking ''April 1, 2005'' and inserting ''October 1, 2007.''.

(d) TECHNICAL AMENDMENTS.—

(1) Section 4611(b) is amended—

(A) by striking ''or exported from'' in paragraph (1)(A),

(B) by striking ''or exportation'' in paragraph (1)(B), and

(C) by striking ''AND EXPORTATION'' in the heading.

(2) Section 4611(d)(3) is amended—

(A) by striking ''or exporting the crude oil, as the case may be'' in the text and inserting ''the crude oil'', and

(B) by striking ''OR EXPORTS'' in the heading.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Reinsurance Inversion Limitations

SEC. ____11. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversion Limitations

SEC. ____21. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3319. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—CURB TAX ABUSES

Subtitle A—Tax Shelters

SEC. ___01. SHORT TITLE.

This subtitle may be cited as the ''Abusive Tax Shelter Shutdown Act of 2002''.

SEC. ___02. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that:

(1) Many corporate tax shelter transactions are complicated ways of accomplishing nothing aside from claimed tax benefits, and the legal opinions justifying those transactions take an inappropriately narrow and restrictive view of well-developed court doctrines under which—

(A) the taxation of a transaction is determined in accordance with its substance and not merely its form,

(B) transactions which have no significant effect on the taxpayer's economic or beneficial interests except for tax benefits are treated as sham transactions and disregarded,

(C) transactions involving multiple steps are collapsed when those steps have no substantial economic meaning and are merely designed to create tax benefits,

(D) transactions with no business purpose are not given effect, and

(E) in the absence of a specific congressional authorization, it is presumed that Congress did not intend a transaction to result in a negative tax where the taxpayer's economic position or rate of return is better after tax than before tax.

(2) Permitting aggressive and abusive tax shelters not only results in large revenue losses but also undermines voluntary compliance with the Internal Revenue Code of 1986.

(b) PURPOSE.—The purpose of this subtitle is to eliminate abusive tax shelters by denying tax attributes claimed to arise from transactions that do not meet a heightened economic substance requirement and by repealing the provision that permits legal opinions to be used to avoid penalties on tax underpayments resulting from transactions without significant economic substance or business purpose.

PART I—CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE

SEC. ___11. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(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 income 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.

''(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 are 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 subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and 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 referred to in section 6662(i)(2), and the requirements of this subsection shall be construed as being in addition to any such other rule of law.''

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

PART II—PENALTIES

SEC. ___21. INCREASE IN PENALTY ON UNDERPAYMENTS RESULTING FROM FAILURE TO SATISFY CERTAIN COMMON LAW RULES.

(a) IN GENERAL.—Section 6662 (relating to imposition of accuracy-related penalty) is amended by adding at the end the following new subsection:

''(i) INCREASE IN PENALTY IN CASE OF FAILURE TO SATISFY CERTAIN COMMON LAW RULES.—

''(1) IN GENERAL.—To the extent that an underpayment is attributable to a disallowance described in paragraph (2)—

''(A) subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent', and

''(B) subsection (d)(2)(B) and section 6664(c) shall not apply.

''(2) DISALLOWANCES DESCRIBED.—A disallowance is described in this subsection if such disallowance is on account of—

''(A) a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(m)(2),

''(B) a lack of business purpose for such transaction or because the form of the transaction does not reflect its substance, or

''(C) a failure to meet the requirements of any other similar rule of law.

''(3) INCREASE IN PENALTY NOT TO APPLY IF COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—Paragraph (1)(A) shall not apply if the taxpayer discloses to the Secretary (as such time and in such manner as the Secretary shall prescribe) such information as the Secretary shall prescribe with respect to such transaction.''.

(b) MODIFICATIONS TO PENALTY ON SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX.—

(1) MODIFICATION OF THRESHOLD.—Subparagraph (A) of section 6662(d)(1) is amended to read as follows:

''(A) IN GENERAL.—For purposes of this section, 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) $500,000, or

''(ii) the greater of 10 percent of the tax required to be shown on the return for the taxable year or $5,000.''

(2) MODIFICATION OF PENALTY ON TAX SHELTERS, ETC.—Clauses (i) and (ii) of section 6662(d)(2)(C) are amended to read as follows:

''(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.''

''(ii) DETERMINATION OF UNDERSTATEMENTS WITH RESPECT TO TAX SHELTERS, ETC.—In any case in which there are one or more items attributable to a tax shelter, the amount of the understatement under subparagraph (A) shall in no event be less than the amount of understatement which would be determined for the taxable year if all items shown on the return which are not attributable to any tax shelter were treated as being correct. A similar rule shall apply in cases to which subsection (i) applies, whether or not the items are attributable to a tax shelter.''

(c) TREATMENT OF AMENDED RETURNS.—Subsection (a) of section 6664 is amended by adding at the end the following new sentence: ''For purposes of this subsection, an amended return shall be disregarded if such return is filed on or after the date the taxpayer is first contacted by the Secretary regarding the examination of the return.''

SEC. ___22. PENALTY ON PROMOTERS OF TAX AVOIDANCE STRATEGIES WHICH HAVE NO ECONOMIC SUBSTANCE, ETC.

(a) PENALTY.—

(1) IN GENERAL.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) PENALTY ON SUBSTANTIAL PROMOTERS FOR PROMOTING TAX AVOIDANCE STRATEGIES WHICH HAVE NO ECONOMIC SUBSTANCE, ETC.—

''(1) IMPOSITION OF PENALTY.—Any substantial promoter of a tax avoidance strategy shall pay a penalty in the amount determined under paragraph (2) with respect to such strategy if such strategy (or any similar strategy promoted by such promoter) fails to meet the requirements of any rule of law referred to in section 6662(i)(2).

''(2) AMOUNT OF PENALTY.—The penalty under paragraph (1) with respect to a promoter of a tax avoidance strategy is an amount equal to 100 percent of the gross income derived (or to be derived) by such promoter from such strategy.

''(3) TAX AVOIDANCE STRATEGY.—For purposes of this subsection, the term 'tax avoidance strategy' means any entity, plan, arrangement, or transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax.

''(4) SUBSTANTIAL PROMOTER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'substantial promoter' means, with respect to any tax avoidance strategy, any promoter if—

''(i) such promoter offers such strategy to more than 1 potential participant, and

''(ii) such promoter may receive fees in excess of $500,000 in the aggregate with respect to such strategy.

''(B) AGGREGATION RULES.—For purposes of this paragraph—

''(i) RELATED PERSONS.—A promoter and all persons related to such promoter shall be treated as 1 person who is a promoter.

''(ii) SIMILAR STRATEGIES.—All similar tax avoidance strategies of a promoter shall be treated as 1 tax avoidance strategy.

''(C) PROMOTER.—The term 'promoter' means any person who participates in the promotion, offering, or sale of the tax avoidance strategy.

''(D) RELATED PERSON.—Persons are related if they bear a relationship to each other which is described in section 267(b) or 707(b).

''(4) COORDINATION WITH SUBSECTION (a).—No penalty shall be imposed by this subsection on any promoter with respect to a tax avoidance strategy if a penalty is imposed under subsection (a) on such promoter with respect to such strategy.''

(2) CONFORMING AMENDMENT.—Subsection (d) of section 6700 is amended—

(A) by striking ''PENALTY'' and inserting ''PENALTIES'', and

(B) by striking ''penalty'' the first place it appears in the text and inserting ''penalties''.

(b) INCREASE IN PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—The first sentence of section 6700(a) is amended by striking ''a penalty equal to'' and all that follows and inserting ''a penalty equal to the greater of $1,000 or 100 percent of the gross income derived (or to be derived) by such person from such activity.''

SEC. ___23. MODIFICATIONS OF PENALTIES FOR AIDING AND ABETTING UNDERSTATEMENT OF TAX LIABILITY INVOLVING TAX SHELTERS.

(a) IMPOSITION OF PENALTY.—Section 6701(a) (relating to imposition of penalty) is amended to read as follows:

''(a) IMPOSITION OF PENALTIES.—

''(1) IN GENERAL.—Any person—

''(A) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

''(B) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

''(C) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,

shall pay a penalty with respect to each such document in the amount determined under subsection (b).

''(2) CERTAIN TAX SHELTERS.—If—

''(A) any person—

''(i) aids or assists in, procures, or advises with respect to the creation, organization, sale, implementation, management, or reporting of a tax shelter (as defined in section 6662(d)(2)(C)(iii)) or of any entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), and

''(ii) opines, advises, represents, or otherwise indicates (directly or indirectly) that the taxpayer's tax treatment of items attributable to such tax shelter or such entity, plan, arrangement, or transaction and giving rise to an understatement of tax liability would more likely than not prevail or not give rise to a penalty,

''(B) such opinion, advice, representation, or indication is unreasonable,

then such person shall pay a penalty in the amount determined under subsection (b). If a standard higher than the more likely than not standard was used in any such opinion, advice, representation, or indication, then subparagraph (A)(ii) shall be applied as if such standard were substituted for the more likely than not standard.''

(b) AMOUNT OF PENALTY.—Section 6701(b) (relating to amount of penalty) is amended—

(1) by inserting ''or (3)'' after ''paragraph (2)'' in paragraph (1),

(2) by striking ''subsection (a)'' each place it appears and inserting ''subsection (a)(1)'', and

(3) by redesignating paragraph (3) as paragraph (4) and by adding after paragraph (2) the following:

''(3) TAX SHELTERS.—In the case of—

''(A) a penalty imposed by subsection (a)(1) which involves a return, affidavit, claim, or other document relating to a tax shelter or an entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), and

''(B) any penalty imposed by subsection (a)(2),

the amount of the penalty shall be equal to 100 percent of the gross proceeds derived (or to be derived) by the person in connection with the tax shelter or entity, plan, arrangement, or transaction.''

(c) REFERRAL AND PUBLICATION.—If a penalty is imposed under section 6701(a)(2) of the Internal Revenue Code of 1986 (as added by subsection (a)) on any person, the Secretary of the Treasury shall—

(1) notify the Director of Practice of the Internal Revenue Service and any appropriate State licensing authority of the penalty and the circumstances under which it was imposed, and

(2) publish the identity of the person and the fact the penalty was imposed on the person.

(d) CONFORMING AMENDMENTS.—

(1) Section 6701(d) is amended by striking ''Subsection (a)'' and inserting ''Subsection (a)(1)''.

(2) Section 6701(e) is amended by striking ''subsection (a)(1)'' and inserting ''subsection (a)(1)(A)''.

(3) Section 6701(f) is amended by inserting '', tax shelter, or entity, plan, arrangement, or transaction'' after ''document'' each place it appears.

SEC. ___24. FAILURE TO MAINTAIN LISTS.

Section 6708(a) (relating to failure to maintain lists of investors in potentially abusive tax shelters) is amended by adding at the end the following: ''In the case of a tax shelter (as defined in section 6662(d)(2)(C)(iii)) or entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), the penalty shall be equal to 50 percent of the gross proceeds derived (or to be derived) from each person with respect to which there was a failure and the limitation of the preceding sentence shall not apply.''

SEC. ___25. 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 TAX SHELTER INFORMATION WITH RETURN.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include with its return of Federal income tax any information required to be included under section 6011 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b). No penalty shall be imposed on any such failure if it is shown that such failure is due to reasonable cause.

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—The amount of the penalty under subsection (a) shall be equal to the greater of—

''(A) 5 percent of any increase in Federal tax which results from a difference between the taxpayer's treatment (as shown on its return) of items attributable to the reportable transaction to which the failure relates and the proper tax treatment of such items, or

''(B) $100,000.

For purposes of subparagraph (A), the last sentence of section 6664(a) shall apply.

''(2) LISTED TRANSACTION.—If the failure under subsection (a) relates to 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, paragraph (1)(A) shall be applied by substituting '10 percent' for '5 percent'.

''(c) REPORTABLE TRANSACTION.—For purposes of this section, the term 'reportable transaction' means any transaction with respect to which information is required under section 6011 to be included with a taxpayer's return of tax because, as determined under regulations prescribed under section 6011, such transaction has characteristics which may be indicative of a tax avoidance transaction.

''(d) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include tax shelter information on return.''

SEC. ___26. REGISTRATION OF CERTAIN TAX SHELTERS WITHOUT CORPORATE PARTICIPANTS.

Section 6111(d)(1)(A) (relating to certain confidential arrangements treated as tax shelters) is amended by striking ''for a direct or indirect participant which is a corporation''.

SEC. ___27. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this part shall apply to transactions after the date of the enactment of this Act.

(b) SECTION ___21.—The amendments made by subsections (b) and (c) of section ___21 shall apply to taxable years ending after the date of the enactment of this Act.

(c) SECTION ___22.—The amendments made by subsection (a) of section ___22 shall apply to any tax avoidance strategy (as defined in section 6700(c) of the Internal Revenue Code of 1986, as amended by this part) interests in which are offered to potential participants after the date of the enactment of this Act.

(d) SECTION ___26.—The amendment made by section ___26 shall apply to any tax shelter interest which is offered to potential participants after the date of the enactment of this Act.

PART III—LIMITATIONS ON IMPORTATION OR TRANSFER OF BUILT-IN LOSSES

SEC. ___31. LIMITATION ON 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) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(1) 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 paragraph (2) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(2) PROPERTY DESCRIBED.—For purposes of paragraph (1), property is described in this paragraph if—

''(A) 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

''(B) 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.

''(3) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of paragraph (1), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in paragraph (2) which is transferred in such transaction would (but for this subsection) exceed the fair market value of such property immediately after such transaction.''

(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)(2) 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 DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act.

SEC. ___32. DISALLOWANCE OF PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) 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:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value immediately after the contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property over its fair market value immediately after the contribution.''

(b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY ON TRANSFER OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or with respect to which there is a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the transferee partner's proportionate share of the adjusted basis of the partnership property exceeds 110 percent of the basis of such partner's interest in the partnership.''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

''SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.''

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss.''

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds 10 percent of the aggregate adjusted basis of partnership property immediately after the distribution.''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

''SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.''

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (a) shall apply to transfers after the date of the enactment of this Act.

(3) SUBSECTION (c).—The amendments made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

Subtitle B—Reinsurance

SEC. ___41. SHORT TITLE.

This subtitle may be cited as the ''Reinsurance Tax Equity Act of 2002''.

SEC. ___42. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company

taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversions

SEC. ___51. SHORT TITLE.

This subtitle may be cited as the ''Corporate Patriot Enforcement Act of 2002''.

SEC. ___52. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3320. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . 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 ''2003'' and inserting ''2012''.

SA 3321. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',

(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',

(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',

(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',

(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',

(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',

(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',

(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and

(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 5 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',
(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',
(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',
(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',
(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',
(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and
(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',
(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and
(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 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.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(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.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3322. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',
(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',
(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',
(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',
(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',
(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',
(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',
(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and
(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 2.5 percent but less than 5 percent	$250
At least 5 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',
(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',
(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',
(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',
(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',
(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and
(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',
(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and
(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 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.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(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.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3323. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b)

of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',

(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',

(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',

(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',

(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',

(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',

(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',

(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and

(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',

(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',

(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',

(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',

(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',

(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and

(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',

(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and

(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 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.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(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.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3324. Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. CHAFEE, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3239 submitted by Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. LIEBERMAN, Mr. MCCAIN, Mr. JEFFORDS, Mr. CHAFEE, Mr. NELSON of Nebraska, and Mr. REID) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the title heading and insert the following:

SEC. 1101. PURPOSE.

The purpose of this title is to establish a greenhouse gas inventory, reductions registry, and information system that—

(1) are complete, consistent, transparent, and accurate;

(2) will create reliable and accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and

(3) will acknowledge and encourage greenhouse gas emission reductions.

SEC. 1102. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BASELINE.—The term ''baseline'' means the historic greenhouse gas emission levels of an entity, as adjusted upward by the designated agency to reflect actual reductions that are verified in accordance with—

(A) regulations promulgated under section 1104(c)(1); and

(B) relevant standards and methods developed under this title.

(3) DATABASE.—The term ''database'' means the National Greenhouse Gas Database established under section 1104.

(4) DESIGNATED AGENCY.—The term ''designated agency'' means a department or agency to which responsibility for a function or program is assigned under the memorandum of agreement entered into under section 1103(a).

(5) DIRECT EMISSIONS.—The term ''direct emissions'' means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(6) ENTITY.—The term ''entity'' means—

(A) a person located in the United States; or

(B) a public or private entity, to the extent that the entity operates in the United States.

(7) FACILITY.—The term ''facility'' means—

(A) all buildings, structures, or installations located on any 1 or more contiguous or adjacent properties of an entity in the United States; and

(B) a fleet of 20 or more motor vehicles under the common control of an entity.

(8) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons;

(F) sulfur hexafluoride; and

(G) any other anthropogenic climate-forcing emissions with significant ascertainable global warming potential, as—

(i) recommended by the National Academy of Sciences under section 1107(b)(3); and

(ii) determined in regulations promulgated under section 1104(c)(1) (or revisions to the regulations) to be appropriate and practicable for coverage under this title.

(9) INDIRECT EMISSIONS.—The term ''indirect emissions'' means greenhouse gas emissions that—

(A) are a result of the activities of an entity; but

(B)(i) are emitted from a facility owned or controlled by another entity; and

(ii) are not reported as direct emissions by the entity the activities of which resulted in the emissions.

(10) REGISTRY.—The term ''registry'' means the registry of greenhouse gas emission reductions established as a component of the database under section 1104(b)(2).

(11) SEQUESTRATION.—

(A) IN GENERAL.—The term ''sequestration'' means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term ''sequestration'' includes—

(i) soil carbon sequestration;

(ii) agricultural and conservation practices;

(iii) reforestation;

(iv) forest preservation;

(v) maintenance of an underground reservoir; and

(vi) any other appropriate biological or geological method of capture, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

SEC. 1103. ESTABLISHMENT OF MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall direct the Secretary of Energy, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Transportation,

and the Administrator to enter into a memorandum of agreement under which those heads of Federal agencies will—

(1) recognize and maintain statutory and regulatory authorities, functions, and programs that—

(A) are established as of the date of enactment of this Act under other law;

(B) provide for the collection of data relating to greenhouse gas emissions and effects; and

(C) are necessary for the operation of the database;

(2)(A) distribute additional responsibilities and activities identified under this title to Federal departments or agencies in accordance with the missions and expertise of those departments and agencies; and

(B) maximize the use of available resources of those departments and agencies; and

(3) provide for the comprehensive collection and analysis of data on greenhouse gas emissions relating to product use (including the use of fossil fuels and energy-consuming appliances and vehicles).

(b) MINIMUM REQUIREMENTS.—The memorandum of agreement entered into under subsection (a) shall, at a minimum, retain the following functions for the designated agencies:

(1) DEPARTMENT OF ENERGY.—The Secretary of Energy shall be primarily responsible for developing, maintaining, and verifying the registry and the emission reductions reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)).

(2) DEPARTMENT OF COMMERCE.—The Secretary of Commerce shall be primarily responsible for the development of—

(A) measurement standards for the monitoring of emissions; and

(B) verification technologies and methods to ensure the maintenance of a consistent and technically accurate record of emissions, emission reductions, and atmospheric concentrations of greenhouse gases for the database.

(3) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator shall be primarily responsible for—

(A) emissions monitoring, measurement, verification, and data collection under this title and title IV (relating to acid deposition control) and title VIII of the Clean Air Act (42 U.S.C. 7651 et seq.), including mobile source emissions information from implementation of the corporate average fuel economy program under chapter 329 of title 49, United States Code; and

(B) responsibilities of the Environmental Protection Agency relating to completion of the national inventory for compliance with the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(4) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture shall be primarily responsible for—

(A) developing measurement techniques for—

(i) soil carbon sequestration; and

(ii) forest preservation and reforestation activities; and

(B) providing technical advice relating to biological carbon sequestration measurement and verification standards for measuring greenhouse gas emission reductions or offsets.

(c) DRAFT MEMORANDUM OF AGREEMENT.—Not later than 15 months after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall publish in the Federal Register, and solicit comments on, a draft version of the memorandum of agreement described in subsection (a).

(d) NO JUDICIAL REVIEW.—The final version of the memorandum of agreement shall not be subject to judicial review.

SEC. 1104. NATIONAL GREENHOUSE GAS DATABASE.

(a) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the designated agencies, in consultation with the private sector and nongovernmental organizations, shall jointly establish, operate, and maintain a database, to be known as the ''National Greenhouse Gas Database'', to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the designated agencies shall jointly promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The designated agencies shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the reporting of some or all of the same greenhouse gas emissions or emission reductions by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect new technologies or methods for measuring or calculating greenhouse gas emissions; and

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities.

SEC. 1105. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—An entity that participates in the registry shall meet the requirements described in subsection (b).

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline (including all of the entity's greenhouse gas emissions on an entity-wide basis); and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(c) REPORTS.—

(1) REQUIRED REPORT.—Not later than April 1 of the third calendar year that begins after the date of enactment of this Act, and not later than April 1 of each calendar year thereafter, subject to paragraph (3), an entity described in subsection (a) shall submit to each appropriate designated agency a report that describes, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the emissions from products manufactured and sold by the entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the designated agency determines in the regulations promulgated under section 1104(c)(1) may be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting reductions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry; and

(B) submit to any designated agency, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 1104(c)(1) and that relates to—

(i) with respect to the calendar year preceding the calendar year in which the information is submitted, and with respect to any greenhouse gas emitted by the entity—

(I) project reductions from facilities owned or controlled by the reporting entity in the United States;

(II) transfers of project reductions to and from any other entity;

(III) project reductions and transfers of project reductions outside the United States;

(IV) other indirect emissions that are not required to be reported under paragraph (1); and

(V) product use phase emissions;

(ii) with respect to greenhouse gas emission reductions activities of the entity that have been carried out during or after 1990, verified in accordance with regulations promulgated under section 1104(c)(1), and submitted to 1 or more designated agencies before the date that is 4 years after the date of enactment of this Act, any greenhouse gas emission reductions that have been reported or submitted by an entity under—

(I) section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

(II) any other Federal or State voluntary greenhouse gas reduction program; and

(iii) any project or activity for the reduction of greenhouse gas emissions or sequestration of a greenhouse gas that is carried out by the entity, including a project or activity relating to—

(I) fuel switching;

(II) energy efficiency improvements;

(III) use of renewable energy;

(IV) use of combined heat and power systems;

(V) management of cropland, grassland, or grazing land;

(VI) a forestry activity that increases forest carbon stocks or reduces forest carbon emissions;

(VII) carbon capture and storage;

(VIII) methane recovery;

(IX) greenhouse gas offset investment; and

(X) any other practice for achieving greenhouse gas reductions as recognized by 1 or more designated agencies.

(3) EXEMPTIONS FROM REPORTING.—

(A) IN GENERAL.—If the Director of the Office of National Climate Change Policy determines under section 1108(b) that the reporting requirements under paragraph (1) shall apply to all entities (other than entities exempted by this paragraph), regardless of participation or nonparticipation in the registry, an entity shall be required to submit reports under paragraph (1) only if, in any calendar year after the date of enactment of this Act—

(i) the total greenhouse gas emissions of at least 1 facility owned by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); or

(ii)(I) the total quantity of greenhouse gases produced, distributed, or imported by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); and

(II) the entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(B) ENTITIES ALREADY REPORTING.—

(i) IN GENERAL.—An entity that, as of the date of enactment of this Act, is required to report carbon dioxide emissions data to a Federal agency shall not be required to re-report that data for the purposes of this title.

(ii) REVIEW OF PARTICIPATION.—For the purpose of section 1108, emissions reported under clause (i) shall be considered to be reported by the entity to the registry.

(4) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for each designated agency to which the report is submitted to verify, in accordance with measurement and verification methods and standards developed under section 1106, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) net of any increases in—

(aa) direct emissions; and

(bb) indirect emissions described in paragraph (1)(C)(ii); or

(ii) actual increases in net sequestration.

(5) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from including emission reductions reported to the registry in the calculation of the baseline of the entity in future years.

(6) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 1106, a entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to each appropriate designated agency.

(7) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The designated agencies shall ensure, to the maximum extent practicable, that information in the database is—

(i) published;

(ii) accessible to the public; and

(iii) made available in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the designated agencies determine that publishing or otherwise making available information described in that subparagraph poses a risk to national security.

(8) DATA INFRASTRUCTURE.—The designated agencies shall ensure, to the maximum extent practicable, that the database uses, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(9) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 1104(c)(1) and implementing the database, the designated agencies shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the appropriate units for reporting each greenhouse gas;

(B) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emission reductions in a manner that will encourage the development of private sector trading and exchanges;

(C) the greenhouse gas reduction and sequestration methods and standards applied in other countries, as applicable or relevant;

(D) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production and importation data are adequate to implement the database;

(E) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry; and

(F) the need of the registry to maintain valid and reliable information on baselines of entities so that, in the event of any future action by Congress to require entities, individually or collectively, to reduce greenhouse gas emissions, Congress will be able—

(i) to take into account that information; and

(ii) to avoid enacting legislation that penalizes entities for achieving and reporting reductions.

(d) ANNUAL REPORT.—The designated agencies shall jointly publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases; and

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Subject to section 552 of title 5, United States Code, information collected and maintained in the database by a designated agency shall be made available to the public.

(2) EXCEPTION.—Notwithstanding paragraph (1), a designated agency shall not disclose information obtained under this section directly or indirectly from an entity, if such information would, upon being made public, disclose—

(A) a trade secret; or

(B) other proprietary information of the entity.

(3) DISCLOSURE FOR VALIDITY.—Notwithstanding paragraph (2), proprietary information shall be made available to the public if 1 or more of the designated agencies determine that disclosure of the information is necessary to determine the validity of emission reductions that have been—

(A) recorded in the registry; and

(B) transferred or traded based on value created through recording in the registry.

SEC. 1106. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the designated agencies shall jointly develop comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards developed under paragraph (1) shall address the need for—

(A) standardized measurement and verification practices for reports made by all entities participating in the registry, taking into account—

(i) protocols and standards in use by entities desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage and shifted use;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions; and

(iv) such other factors as the designated agencies determine to be appropriate;

(B) measurement and verification of actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(C) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) organic soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(D) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, the Administrator, and the Secretary of Energy determine to be appropriate; and

(E) other factors that, as determined by the designated agencies, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The designated agencies shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary of Commerce shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The designated agencies may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the designated agencies may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

SEC. 1107. INDEPENDENT REVIEWS.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report that—

(1) describes the efficacy of the implementation and operation of the database; and

(2) includes any recommendations for improvements to this title and programs carried out under this title—

(A) to achieve a consistent and technically accurate record of greenhouse gas emissions, emission reductions, and atmospheric concentrations; and

(B) to achieve the purposes of this title.

(b) REVIEW OF SCIENTIFIC METHODS.—The designated agencies shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall—

(1) review the scientific methods, assumptions, and standards used by the designated agencies in implementing this title;

(2) not later than 4 years after the date of enactment of this Act, submit to Congress a report that describes any recommendations for improving—

(A) those methods and standards; and

(B) related elements of the programs, and structure of the database, established by this title; and

(3) regularly review and update as appropriate the list of anthropogenic climate-forcing emissions with significant global warming potential described in section 1102(8)(G).

SEC. 1108. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry under section 1105(c)(1) represent less than 60 percent of the national aggregate anthropogenic greenhouse gas emissions.

(b) INCREASED APPLICABILITY OF REQUIREMENTS.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of the aggregate national anthropogenic greenhouse gas emissions are being reported to the registry—

(1) the reporting requirements under section 1105(c)(1) shall apply to all entities (except entities exempted under section 1105(c)(3)), regardless of any participation or nonparticipation by the entities in the registry; and

(2) each entity shall submit a report described in section 1105(c)(1)—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) RESOLUTION OF DISAPPROVAL.—For the purposes of this section, the determination of the Director of the Office of National Climate Change Policy under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

SEC. 1109. ENFORCEMENT.

If an entity that is required to report greenhouse gas emissions under section 1105(c)(1) or 1108 fails to comply with that requirement, the Attorney General may, at the request of the designated agencies, bring a civil action in United States district court against the entity to impose on the entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

SEC. 1110. REPORT ON STATUTORY CHANGES AND HARMONIZATION.

Not later than 3 years after the date of enactment of this Act, the President shall submit to Congress a report that describes any modifications to this title or any other provision of law that are necessary to improve the accuracy or operation of the database and related programs under this title.

SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 3325. Mr. SHELBY (for himself, Mr. AKAKA, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 205, between lines 8 and 9, insert the following:

(f) ESTABLISHMENT OF A PROGRAM FOR THE PRODUCTION OF FUEL ETHANOL FROM MUNICIPAL SOLID WASTE.—

(1) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(2) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program that promotes expedited construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol to supplement fossil fuel.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out programs that promote expedited construction * * *.

(4) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (2) to an applicant if—

(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (2);

(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(5) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(A) meet all applicable Federal and State permitting requirements;

(B) are most likely to be successful; and

(C) are located in local markets that have the greatest need for the facility because of—

(i) the limited availability of land for waste disposal; or

(ii) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(6) MATURITY.—A loan guaranteed under paragraph (2) shall have a maturity of not more than 20 years.

(7) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (2) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(8) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under paragraph (2) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(9) GUARANTEE FEE.—The recipient of a loan guarantee under paragraph (2) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(10) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(11) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to the Congress a report on the activities of the Secretary under this section.

(12) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under paragraph (2) terminates on the date that is 10 years after the date of enactment of this Act.

SA 3326. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 103, line 19, strike all through page 104, line 7, and insert the following:

''(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.

''(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, or

''(ii) $500 for each 0.5 kilowatt of capacity of such property.

SA 3327. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes; as follows:

On page ____, insert between lines ____ and ____ the following:

(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

SA 3328. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes; as follows:

On page ____, insert between lines ____ and ____ the following:

(c) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95–563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

SA 3329. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 68, line 22, strike all through page 72, line 19, and insert:

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2009.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), 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 new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(C) Section 6501(m), as amended by this Act, is amended by inserting ''40B(e),'' after ''40(f),''.

(D) 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 after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

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

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL MIXTURES.—

(1) IN GENERAL.—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

''(n) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)), the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)).''.

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2010.

SA 3330. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 68, line 22, strike all through page 72, line 19, and insert:

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2007.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), 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 new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(C) Section 6501(m), as amended by this Act, is amended by inserting ''40B(e),'' after ''40(f),''.

(D) 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 after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

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

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL MIXTURES.—

(1) IN GENERAL.—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

''(n) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)), the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)).''.

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2008.

SA 3331. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 50, strike lines 23 and 24, and insert the following:

''(1) 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, 2006.''.

(b) 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.''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 24, 2002, at 10 a.m., in room 485 of the Russell Senate Office Building to conduct a hearing on S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, April 30, 2002, at 9:30 a.m., in room 428A of the Russell Senate Office Building to conduct a joint hearing with the Senate Small Business Committee on ''Small Business Development in Native American Communities: Is the Federal Government Meeting Its Obligations?''

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, April 23, 2002, at 10 a.m., to conduct an oversight hearing on ''The Federal Deposit Insurance System and Recommendations for Reform.''

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, April 23, 2002, at 9:30 a.m. on ''Generic Pharmaceuticals: Marketplace Access and Consumer Issues''.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 23, 2002, at 10:15 a.m., to hold a hearing titled, ''Increasing out Nonproliferation Efforts in the Former Soviet Union.''

Agenda

Witnesses

Panel 1: The Honorable William S. Cohen, Former Secretary of Defense, Chairman and Chief Executive Officer, The Cohen Group, Washington, DC.

Panel 2: Dr. Siegfried S. Hecker, Senior Fellow, Los Alamos National Laboratory, Los Alamos, NM, and Dr. Constantine C. Menges, Senior Fellow, the Hudson Institute, Washington, DC.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, April 23, 2002, immediately following the first rollcall vote of the day for a business meeting to consider the nomination of Paul A. Quander, Jr., to be Director of the District of Columbia Court Services and Offender Supervision Agency.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''Implementation of ESEA: Status and Key issues'' during the session of the Senate on Tuesday, April 23, 2002, at 2:30 p.m.

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

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS AND COMPETITION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Antitrust, Business Rights and Competition, be authorized to meet to conduct a hearing on ''Dominance on the Ground: Cable Competition and the ATT-Comcast Merger,'' on Tuesday, April, 23, 2002, at 2 p.m., in SD–226.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENTAL MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA

Mr. REID. Mr. President I ask unanimous consent that the Committee on governmental Affairs, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, be authorized to meet on Tuesday, April 23, 2002, at 10 p.m., for a hearing to examine ''The Economic Implications of the Human Capital Crisis.''

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

SUBCOMMITTEE ON PUBLIC HEALTH

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Public Health,

be authorized to meet for a hearing on ''Protecting Human Subjects in Research: Are Current Safeguards Adequate?'' during the session of the Senate on Tuesday, April 23, 2002, at 10 a.m.

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

FAMILY FARMER BANKRUPTCY PROTECTION

Mr. REID. Mr. President, it is my understanding H.R. 4167, received from the House, is at the desk. I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4167) to extend for 8 additional months the period for which chapter 12 title 11 of the United States Code is reenacted.

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

Mr. LEAHY. Mr. President, I am pleased that the Senate will pass H.R. 4167, to retroactively renew family farmer bankruptcy protection until June 1, 2002. After months of inaction, the House of Representatives finally passed this legislation two days ago to reinstate Chapter 12 of the Bankruptcy Code. It is past time for Congress to act to restore this basic safety net for America's family farmers.

Unfortunately, too many family farmers have been left in legal limbo in bankruptcy courts across the country since Chapter 12 of the Bankruptcy Code expired on October 1, 2001. Since last November, Senator CARNAHAN and I have tried to pass S. 1630, a Carnahan-Grassley bipartisan bill to retroactively restore chapter 12. The Senate Judiciary Committee unanimously reported the bill to the Senate on November 8, 2001, but it has been subject to a secret hold by the minority for the last six months.

This is the third time in the last year that this Congress must act to retroactively restore basic bankruptcy safeguards for family farmers because Chapter 12 is still a temporary provision despite its first passage into law in 1986. Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and into last year, for example, the Senate, then controlled by the other party, failed to take up a House-passed bill to retroactively renew chapter 12 and, as a result, family farmers lost chapter 12 bankruptcy protection for 8 months. The current lapse of chapter 12 has lasted more than 6 months. Enough is enough.

Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming. It is time for Congress to make chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our nation's family farmers.

I strongly support Senator CARNAHAN's bipartisan amendment to make chapter 12 a permanent part of the Bankruptcy Code that is part of the Senate-passed farm bill. The Senate unanimously approved the Carnahan amendment by a 93–0 vote. Unfortunately, the House majority is objecting to including the Carnahan amendment in the farm bill conference report.

In the current bankruptcy reform conference, I am hopeful Congress will update and expand the coverage of chapter 12. In the meantime, the farm bill conference should make permanent basic bankruptcy protection for our family farmers across the country by adopting the Carnahan amendment.

I commend Senator CARNAHAN for her continued leadership in protecting family farms across the country.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD.

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

The bill (H.R. 4167) was read the third time and passed.

EXTENDING SYMPATHY AND CONDOLENCES TO FAMILIES OF CANADIAN SOLDIERS KILLED AND WOUNDED IN AFGHANISTAN

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 250 submitted earlier today by Senator LANDRIEU.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 250) extending sympathy and condolences to the families of the Canadian soldiers who were killed and the Canadian soldiers who were wounded on April 18, 2002, in Afghanistan, and to all the Canadian people.

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

Ms. LANDRIEU. Mr. President, I rise today to speak on a rather unpleasant subject.

I wish to offer a resolution offering the condolences of the United States Senate to the families and loved ones of those Canadian servicemen who were killed and wounded in Afghanistan last week.

The Canadian and American armies have fought side-by-side since the first world war and that tradition has continued during our current war on terrorism. The servicemen and women of Canada have always proven to be brave and courageous fighters and they are certainly keeping up that reputation in engagements such as Operation Anaconda. Without the assistance of our Canadian allies, the burden of this present war would be much heavier on our own Soldiers, Sailors, Airmen and Marines.

It is with heavy heart that I offer this measure. Not since the Korean War has a Canadian soldier died in a combat zone. It is my hope that Canadian servicemen and women will not be again called upon to make the ultimate sacrifice for a long time.

I would like to honor today the Canadian soldiers of the 3rd Battalion, Princess Patricia's Canadian Light Infantry Battle Group, who have been in Afghanistan since late January as part of Operation Apollo and have distinguished themselves for their heroism and professionalism. No doubt today is a sad day amongst that unit as they mourn the loss of their comrades. Despite this horrible setback, the Canadian Army is focusing on the task at hand and is still fully engaged in its mission.

For these reasons and for the countless acts of friendship between our two nations, I offer this resolution to extend the sympathy of this Senate to the people and fighting forces of Canada.

Mr. REID. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements related to the resolution be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 250) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 250), with its preamble, reads as follows:

S. RES. 250

Whereas United States and Canadian military forces have fought side by side in conflicts since the World War I;

Whereas the fighting men and women of Canada have always proved themselves to be brave and courageous warriors;

Whereas the Canadian forces are currently fighting alongside United States and European troops in the hunt for the remnants of Osama bin Laden's terrorist organization, al Qaeda, and Afghanistan's former ruling militia, the Taliban;

Whereas the Canadian soldiers of the 3rd Battalion, Princess Patricia's Canadian Light Infantry Battle Group, have been in Afghanistan since late January 2002, as part of Operation Apollo, and have distinguished themselves for their heroism and professionalism; and

Whereas despite this tragic incident, the Canadian Army is focusing on the task at hand and is still fully engaged in its mission in Afghanistan: Now, therefore, be it

Resolved, That the Senate—

(1) expresses sorrow for the loss of life and wounding of Canadian servicemen in Afghanistan;

(2) offers sympathy and condolences to the families of the Canadian soldiers who were killed and the Canadian soldiers who were wounded on April 18, 2002, in Afghanistan, and to all of the Canadian people;

(3) affirms that the centuries-old bond between the Canadian and American peoples and their Armed Forces remains solid; and

(4) praises the performance of Canadian servicemen in Afghanistan for their heroism and professionalism.

MAKING MINORITY PARTY APPOINTMENTS

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 251, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 251) making Minority party appointments for the Committee on Environment and Public Works and the Governmental Affairs Committee for the 107th Congress.

There being no objection, the Senate proceeded to the immediate consideration of the resolution.

Mr. REID. I ask consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 251) was agreed to, as follows:

S. RES. 251

Resolved, That the following be the minority membership on the Committees on Environment and Public Works and Governmental Affairs for the remainder of the 107th Congress, or until their successors are appointed:

Environment and Public Works: Mr. Smith, of New Hampshire, Mr. Warner, Mr. Inhofe, Mr. Bond, Mr. Voinovich, Mr. Crapo, Mr. Chafee, Mr. Specter, and Mr. Domenici.

Governmental Affairs: Mr. Thompson, Mr. Stevens, Ms. Collins, Mr. Voinovich, Mr. Cochran, Mr. Bennett, Mr. Bunning, and Mr. Fitzgerald.

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

Mr. REID. I ask consent the Senate proceed to the consideration of Calendar No. 346, H.R. 169.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 169) to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments.

(Omit the parts in black brackets and insert the part printed in italic.)

H.R. 169

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of [2001] *2002*''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

[TITLE I—GENERAL PROVISIONS

[Sec. 101. Findings.

[Sec. 102. Definitions.

[Sec. 103. Effective date.]

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Sense of Congress.

Sec. 103. Definitions.

Sec. 104. Effective date.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

Sec. 201. Reimbursement requirement.

Sec. 202. Notification requirement.

Sec. 203. Reporting requirement.

Sec. 204. Rules and guidelines.

Sec. 205. Clarification of remedies.

[Sec. 206. Study by General Accounting Office regarding exhaustion of administrative remedies.]

Sec. 206. Studies by General Accounting Office on exhaustion of remedies and certain Department of Justice costs.

TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

Sec. 301. Data to be posted by employing Federal agencies.

Sec. 302. Data to be posted by the Equal Employment Opportunity Commission.

Sec. 303. Rules.

TITLE I—GENERAL PROVISIONS

[SEC. 101. FINDINGS.

[The Congress finds that—

[(1) Federal agencies cannot be run effectively if they practice or tolerate discrimination,

[(2) the Committee on the Judiciary of the House of Representatives has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees that point to chronic problems of discrimination and retaliation against Federal employees,

[(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist $600,000,

[(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities,

[(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service,

[(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase agency compliance with the law,

[(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over agencies' compliance with the law, and

[(8) penalizing Federal agencies by requiring them to pay for any discrimination or whistleblower judgments, awards, and settlements should improve agency accountability with respect to discrimination and whistleblower laws.]

SEC. 101. FINDINGS.

Congress finds that—

(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist $600,000;

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

SEC. 102. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

(i) the employment of other employees; or

(ii) the benefits to which those employees are entitled through statute or contract; and

(B) this Act is not intended to authorize those actions;

(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

(i) reductions in force;

(ii) furloughs;

(iii) other reductions in compensation or benefits for the workforce of the agency; or

(iv) an adverse effect on the mission of the agency.

SEC. [102]. *103.* DEFINITIONS.

For purposes of this Act—

(1) the term ''applicant for Federal employment'' means an individual applying for employment in or under a Federal agency[,]*;*

(2) the term ''basis of alleged discrimination'' shall have the meaning given such term under section 303[,]*;*

(3) the term ''Federal agency'' means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Rate Commission[,]*;*

(4) the term ''Federal employee'' means an individual employed in or under a Federal agency[,]*;*

(5) the term ''former Federal employee'' means an individual formerly employed in or under a Federal agency[,]*;* and

(6) the term ''issue of alleged discrimination'' shall have the meaning given such term under section 303.

SEC. [103]. *104.* EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

SEC. 201. REIMBURSEMENT REQUIREMENT.

(a) APPLICABILITY.—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

(1) any provision of law cited in subsection (c)[,]*;* or

(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

(b) REQUIREMENT.—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, of such fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

(c) SCOPE.—The provisions of law cited in this subsection are the following:

(1) Section 2302(b) of title 5 [of the], United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

(2) The provisions of law specified in section 2302(d) of title 5 [of the], United States Code.

[(3) The Whistleblower Protection Act of 1986 and the amendments made by such Act.]

SEC. 202. NOTIFICATION REQUIREMENT.

(a) IN GENERAL.—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

(1) in accordance with otherwise applicable provisions of law[,]*;* or

(2) [if to the extent that] *if, or to the extent that,* no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

(b) POSTING ON THE INTERNET.—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

(c) EMPLOYEE TRAINING.—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

SEC. 203. REPORTING REQUIREMENT.

(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, *the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency,* the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year—

(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged[,]*;*

(2) the status or disposition of cases described in paragraph (1)[,]*;*

(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any[,]*;*

(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1)[,]*;*

(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2))[, and]

[(6) a detailed description of—

[(A) the policy implemented by such agency to discipline employees who are determined in any judicial or administrative proceeding to have discriminated against any individual in violation of any of the laws cited in section 201(c), and

[(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken.]

(6) a detailed description of—

(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

(i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and

(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

(A) an examination of trends;

(B) causal analysis;

(C) practical knowledge gained through experience; and

(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

(b) FIRST REPORT.—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal [years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).] *years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).*

SEC. 204. RULES AND GUIDELINES.

(a) ISSUANCE OF RULES AND GUIDELINES.—The President (or the designee of the President) shall issue—

(1) rules to carry out this title[,]*;*

[(2) rules to require that a comprehensive study be conducted in the Executive Branch to determine the best practices for Federal agencies to take appropriate disciplinary actions against Federal employees who are determined in any judicial or administrative proceeding to have discriminated against any individual in violation of any of the laws cited in section 201(c), and]

(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

(3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.

(b) AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—

(1) whether such agency has adopted and will fully follow such guidelines[,]*;*

(2) if such agency has not adopted such guidelines, the reasons for the failure to adopt such guidelines[,]*;* and

(3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

SEC. 205. CLARIFICATION OF REMEDIES.

Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

[SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES.

[(a) STUDY.—Not later than 180 days after the date of the enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified in paragraphs (7) and (8) of section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission. Such study shall include a detailed summary of matters investigated, of information collected, and of conclusions formulated that

lead to determinations of how the elimination of such requirement will—

[(1) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process,

[(2) affect the workload of the Commission,

[(3) affect established alternative dispute resolution procedures in such agencies, and

[(4) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

[(b) REPORT.—Not later than 90 days after completion of the study required by subsection (a), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.]

SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.

(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

(1) STUDY.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

(B) CONTENTS.—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

(ii) affect the workload of the Commission;

(iii) affect established alternative dispute resolution procedures in such agencies; and

(iv) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

(1) STUDY.—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a) (1) and (2).

(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

(a) IN GENERAL.—Each Federal agency shall post on its public Web site, in the time, form, and manner prescribed under section 303 (in conformance with the requirements of this section), summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

(b) CONTENT REQUIREMENTS.—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

(1) The number of complaints filed with such agency in such fiscal year.

(2) The number of individuals filing those complaints (including as the agent of a class).

(3) The number of individuals who filed 2 or more of those complaints.

(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

(A) for all such complaints,

(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

(7) The total number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination, and

(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

(i) the number of individuals who filed those complaints, and

(ii) the number of those complaints which are at the various steps of the complaint process.

(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints.

(c) TIMING AND OTHER REQUIREMENTS.—

(1) CURRENT YEAR DATA.—Data posted under this section for the then current fiscal year shall include both—

(A) interim year-to-date data, updated quarterly, and

(B) final year-end data.

(2) DATA FOR PRIOR YEARS.—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency's corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

(a) IN GENERAL.—The Equal Employment Opportunity Commission shall post on its public Web site, in the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

(b) SPECIFIC REQUIREMENTS.—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

(c) COORDINATION.—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

SEC. 303. RULES.

The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

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

The committee amendments were agreed to.

AMENDMENTS NOS. 3327 AND 3328, EN BLOC

Mr. REID. It is my belief that Senator THOMPSON has two amendments at the desk. I ask consent it be in order to consider these amendments en bloc and

that the amendments be considered agreed to.

The PRESIDING OFFICER. The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. THOMPSON, proposes amendments Nos. 3327 and 3328, en bloc.

The amendments are as follows:

AMENDMENT NO. 3327

(Purpose: To provide for the General Accounting Office to conduct studies on the effects of the Act and of the Contract Disputes Act of 1978 (41 U.S.C. 601 note; Public Law 95–563) on operations of agencies)

On page ____, insert between lines ____ and ____ the following:

(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

——

AMENDMENT NO. 3328

(Purpose: To provide for the General Accounting Office to conduct a study on the administrative and personnel costs incurred by the Department of the Treasury in the administration of the Judgment Fund)

On page ____, insert between lines ____ and ____ the following:

(c) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95–563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 3327 and 3328) were agreed to.

Mr. REID. I ask unanimous consent the motion to reconsider be laid upon the table.

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

Mr. WARNER. Mr. President, I support H.R. 169, the Notification and Federal Employee Anti-Discrimination Act. This historic bill—the first civil rights bill of the new century—strengthens existing laws protecting Federal employees from discrimination and harassment in the workplace.

H.R. 169 will create a more productive work environment by ensuring that agencies enforce the laws intended to protect Federal employees from harassment, discrimination and retaliation for whistleblowing.

I thank the chairman of the Government Affairs Committee, Senator LIEBERMAN, as well as Ranking Member THOMPSON and Senator AKAKA for their leadership on this issue in committee. Their dedication to the passage of this ground-breaking initiative has proven to be of monumental importance.

I applaud the leadership of Congressman JIM SENSENBRENNER for introducing this important legislation. Working with Congressman SENSENBRENNER, I introduced a similar bill in the Senate S. 201, the Federal Employee Protection Act. After the House passed H.R. 169 by a vote of 420 to 0, I urged the Senate Committee on Governmental Affairs to act on H.R. 169 rather than my bill in the interest of moving the process forward.

Finally, I recognize the work of the No Fear Coalition led by Marsha-Coleman Adebayo on this bill. Their efforts have been incredible.

The Notification and Federal Employee Anti-discrimination Act contains three main provisions: one, when agencies lose judgments or make settlements in harassment, discrimination and whistleblower cases, the responsible Federal agency would pay any financial penalty out of its own budget, rather than out of a general Federal judgment fund; two, Federal agencies are required to notify their employees about any applicable discrimination, harassment and whistleblower protection laws; and three, each Federal agency is required to send an annual report to Congress and the Attorney General.

Under current law, agencies are not accountable financially when they lose harassment, discrimination and retaliation cases because any financial penalties are paid out of a Government-wide fund and not the agency's budget. I firmly believe that because there is no financial consequence to their actions, Federal agencies are essentially able to escape responsibility when they fail to comply with the law and are unresponsive to their employees' concerns.

Reports that Federal agencies are indifferent or hostile to complaints of sexual harassment and racial discrimination undermine the ability of the Federal Government to enforce civil rights laws, and hamper efforts to recruit talented individuals for Federal employment. Retaliation against whistleblowers creates a climate in which those people best able to provide accountability to the Government—and to the taxpayer—are unwilling to speak out.

The Federal Government must set an example for the private sector by promoting a workplace that does not tolerate harassment or discrimination of any kind but encourages employees to report illegal activity and mismanagement without fear of reprisal. I urge my colleagues to support this meaningful legislation.

Mr. REID. I ask unanimous consent the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating thereto be printed in the RECORD.

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

The bill (H.R. 169), as amended, was read the third time and passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 169) entitled ''An Act to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site, certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.'', do pass with the following amendments:

(1) Page 2, line 6, strike out **[**2001**]** and insert: *2002*

(2) Page 2, in the table of contents, strike out

[TITLE I—GENERAL PROVISIONS**]**

[Sec. 101. Findings.**]**
[Sec. 102 Definitions.**]**
[Sec. 103 Effective date.**]**

and insert:

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.
Sec. 102. Sense of Congress.
Sec. 103. Definitions.
Sec. 104. Effective date.

(3) Page 2, in the table of contents, strike out

[Sec. 206 Study by the General Accounting Office regarding exhaustion of administrative remedies.**]**

and insert:

Sec. 206. Studies by General Accounting Office on exhaustion of remedies and certain Department of Justice costs.

(4) Page 2, strike out all after line 9 over to and including line 13 on page 4 and insert:

SEC. 101. FINDINGS.

Congress finds that—

(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist $600,000;

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

SEC. 102. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

(i) the employment of other employees; or

(ii) the benefits to which those employees are entitled through statute or contract; and

(B) this Act is not intended to authorize those actions;

(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

(i) reductions in force;

(ii) furloughs;

(iii) other reductions in compensation or benefits for the workforce of the agency; or

(iv) an adverse effect on the mission of the agency.

(5) Page 4, line 14, strike out [102.] and insert: *103.*

(6) Page 4, line 18, strike out [agency,] and insert: *agency;*

(7) Page 4, line 21, strike out [303,] and insert: *303;*

(8) Page 4, line 25, strike out [Commission,] and insert: *Commission;*

(9) Page 5, line 2, strike out [agency,] and insert: *agency;*

(10) Page 5, line 5, strike out [agency,] and insert: *agency;*

(11) Page 5, line 9, strike out [103.] and insert: *104.*

(12) Page 6, line 3, strike out [(c),] and insert: *(c);*

(13) Page 6, line 19, strike out [of the] and insert: ,

(14) Page 7, line 2, strike out [of the] and insert: ,

(15) Page 7, strike out lines 3 and 4

(16) Page 7, line 14, strike out [law,] and insert: *law;*

(17) Page 7, line 15, strike out [if to the extent that] and insert: *if, or to the extent that,*

(18) Page 8, line 8, after ''ate,'' insert: *the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency,*

(19) Page 8, line 14, strike out [alleged,] and insert: *alleged;*

(20) Page 8, line 16, strike out [(1),] and insert: *(1);*

(21) Page 8, line 21, strike out [any,] and insert: *any;*

(22) Page 8, line 25, strike out [(1),] and insert: *(1);*

(23) Page 9 , line 3, strike out [, and] and insert: *;*

(24) Page 9, strike out lines 4 through 14 and insert:

(6) a detailed description of—

(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

(i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and

(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

(A) an examination of trends;

(B) causal analysis;

(C) practical knowledge gained through experience; and

(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

(25) Page 9, strike out lines 18 and 19 and insert:

years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

(26) Page 9, line 23, strike out [title,] and insert: *title;*

(27) Page 9, strike out all after line 23 over to and including line 6 on page 10 and insert:

(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

(28) Page 10, line 20, strike out [guidelines,] and insert: *guidelines;*

(29) Page 10, lines 22 and 23, strike out [guidelines,] and insert: *guidelines;*

(30) Page 11, strike out all after line 9 over to and including line 16 on page 12 and insert:

SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.

(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

(1) STUDY.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

(B) CONTENTS.—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

(ii) affect the workload of the Commission;

(iii) affect established alternative dispute resolution procedures in such agencies; and

(iv) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

(1) STUDY.—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a) (1) and (2).

(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

(31) Page 12, after line 16, insert:

(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

(32) Page 12, after line 16, insert:

(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95–563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

ORDERS FOR WEDNESDAY, APRIL 24, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., tomorrow, Wednesday, April 24; following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the Senate resume consideration of the energy reform bill; that the next amendment to be offered be a Craig amendment regarding hydro; further, that 18 hours remain under cloture on the Daschle-Bingaman substitute amendment.

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

PROGRAM

Mr. REID. In the morning, the first issue we will take up is the Cantwell amendment, followed by the amendment of the Senator from Idaho, Mr. CRAIG.

ADJOURNMENT UNTIL 9:30 A. M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:41 p.m., adjourned until Wednesday, April 24, 2002, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 23, 2002:

THE JUDICIARY

JEFFREY R. HOWARD, OF NEW HAMPSHIRE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT.